

- a. Revising the date of the provision; and
- b. In paragraph (j), by removing the word “parent”; removing “<http://www.dnb.com>” and adding “<http://fedgov.dnb.com/webform>” in its place; and adding a sentence to the end of the paragraph to read as follows:

**52.212-1 Instructions to Offerors—Commercial Items.**

\* \* \* \* \*  
INSTRUCTIONS TO OFFERORS—  
COMMERCIAL ITEMS (APR 2008)  
\* \* \* \* \*

(j) \* \* \* The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

\* \* \* \* \*

(End of provision)

[FR Doc. E8-8447 Filed 4-21-08; 8:45 am]

BILLING CODE 6820-EP-S

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 4, 19, 52, and 53

[FAC 2005-25; FAR Case 2005-040; Item II; Docket 2008-0001, Sequence 01]

RIN 9000-AK95

#### Federal Acquisition Regulation; FAR Case 2005-040, Electronic Subcontracting Reporting System (eSRS)

**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) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form (SF) 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report.

**DATES:** *Effective Date:* April 22, 2008.

*Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before June 23, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-25, FAR case 2005-040, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2005-040” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2005-040. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2005-040” on your attached document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005-25, FAR case 2005-040, 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:** Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044 for clarification of content. Please cite FAC 2005-25, FAR case 2005-040. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

This rule implements in the FAR the use of eSRS to fulfill small business subcontracting reporting requirements. It further amends FAR 19.7 and related clauses to clarify existing small business subcontracting program requirements. The interim rule:

1. Implements the use of eSRS by—
  - Deleting references to Standard Forms 294 and 295 from Parts 1, 19, 52,

and 53 and, where appropriate, replacing them with eSRS.

- Incorporating general instructions from Standard Forms 294 and 295 into the clause at FAR 52.219-9. The language in FAR 52.219-9 differs from the SF 295 general instruction for submitting summary subcontract reports on contracts awarded by the National Aeronautics and Space Administration (NASA) in that the clause requires that the reports be submitted semiannually, rather than annually. This change reflects what NASA currently requires under its own regulations and does not impose a new burden on contractors.

- Adding a requirement that a contractor provide its prime contract number and DUNS number to its subcontractors with subcontracting plans and require that each of its subcontractors with a subcontracting plan provide the prime contract number and its own DUNS number to its subcontractors with subcontracting plans. This is necessary in order for the Government to have insight into all of the subcontracting done under a prime contract. Access to this information will enable the Government to more effectively manage the small business subcontracting program.

- Identifying what individuals/entities are responsible for acknowledging that a report has been received or rejecting the report if it has not been adequately completed.

- Revising FAR 52.219-9 to reflect use of the Year-End Supplementary Report for Small Disadvantaged Businesses in eSRS to provide the information, already required by the clause, on subcontract awards to Small Disadvantaged Businesses. Currently, the clause requires that the information be submitted along with the year-end Summary Subcontract Report. The interim rule provides for a 90-day extension beyond the date when the year-end Summary Subcontract Report is submitted.

- Revising FAR 52.219-25 to allow the report currently required by that clause to be submitted using the Small Disadvantaged Business Participation Report in eSRS, or continuing to use either the Optional Form 312 or the contractor's format.

2. Makes revisions to clarify that—
  - A contractor should have only one commercial plan in place at a time.

- A contract may have only one subcontracting plan. When a modification is issued that would require a subcontracting plan, if the contract already has a subcontracting plan, that plan should be revised to incorporate the goals associated with the modification. A separate

subcontracting plan should not be submitted.

- The goals in a subcontracting plan should be updated when options are exercised.

- Subcontracting plans are not required for subcontractors when the prime contract contains the clause at FAR 52.212-5 or the subcontractor provides a commercial item subject to the clause at FAR 52.244-6.

3. Makes these editorial changes—

- Replaces references to PRO-Net with Central Contractor Registration (CCR) since PRO-Net is an obsolete system and the former PRO-Net functionality being referenced is incorporated in CCR.

- Replaces the acronym “ISR” in Subpart 4.4 with Industrial Security Regulation so that “ISR” will only be used in the FAR to mean Individual Subcontract Report.

The Councils request specific comment on what period the year-end Summary Subcontract Report should cover. The interim rule retains the current FAR requirement (reflected in SF 295) that the report cover subcontracting done during the Government’s fiscal year. However, the eSRS, which is currently being used by some agencies, indicates that the year-end Summary Subcontract Report for a commercial subcontracting plan should reflect subcontracting performed during the contractor’s fiscal year. Therefore, some contractors who are using eSRS and have commercial plans may be reporting subcontracts awarded during their own fiscal year, whereas other contractors are reporting subcontracts awarded during the Government’s fiscal year. The Councils request comment on what period the year-end Summary Subcontract Report should cover, the Government’s fiscal year or the contractor’s fiscal year, with a rationale for the period recommended. In addition, the councils may consider adding further coverage in the FAR to mirror the instructions that are currently in SFs 294 and 295.

This is not a significant regulatory action and, therefore, was not 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 interim rule is not expected 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 it concerns reporting

requirements that only apply to other than small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 4, 19, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005-25, FAR case 2005-040), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the interim rule contains information collection requirements. The information collection requirement subsumes the approved information collection for semi-annual summary subcontract reports on contracts awarded by NASA. Accordingly, the FAR Secretariat will forward a request for approval of the revised information collection requirement concerning OMB Control No. 9000-0006, Subcontracting Plans/ Subcontracting Reporting for Individual Contracts, and OMB Control Number 9000-0007, Summary Subcontract Report, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through this notice.

### *Annual Reporting Burden:*

The annual reporting burden for OMB No. 9000-0006 is estimated as follows:

*Respondents:* 103,908

*Responses per respondent:* 3

*Total annual responses:* 311,724

*Preparation hours per response:* 11.90

*Total response burden hours:*

3,709,515; and

The annual reporting burden for OMB No. 9000-0007 is estimated as follows:

*Respondents:* 103,908

*Responses per respondent:* 1

*Total annual responses:* 103,908

*Preparation hours per response:* 12.4

*Total response burden hours:*

1,288,459.

## D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 23, 2008 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR,

and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VPR), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0006, Subcontracting Plans/Subcontracting Reporting for Individual Contracts, and/or OMB Control Number 9000-0007, Summary Subcontract Report, in all correspondence.

## E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Electronic Subcontracting Reporting System has already replaced the SFs 294 and 295 as the mechanism for submitting small business subcontracting data. This rule updates the FAR to show the current usage of the eSRS. However, pursuant to Pub. L. 98-577 and FAR 1.501, 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 1, 4, 19, 52, and 53

Government procurement.

Dated: April 4, 2008.

**Al Matera,**

*Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 19, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 19, 52, and 53 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

**1.106 [Amended]**

■ 2. Amend section 1.106 by removing from FAR Segment 19.7 OMB Control Number “9000–0006”, and adding “9000–0006 and 9000–0007” in its place; removing from FAR Segment 52.219–9 OMB Control Number “9000–0006”, and adding “9000–0006 and 9000–0007” in its place; and removing FAR Segments “SF 294” with OMB Control Number “9000–0006”, and “SF 295” with OMB Control Number “9000–0007”.

**PART 4—ADMINISTRATIVE MATTERS**

**4.402 [Amended]**

■ 3. Amend section 4.402 in paragraph (b)(2) by removing “(ISR)”.

**4.403 [Amended]**

■ 4. Amend section 4.403 in paragraph (c)(1) by removing “ISR” and adding “Industrial Security Regulation” in its place.

**PART 19—SMALL BUSINESS PROGRAMS**

■ 5. Amend section 19.701 by adding, in alphabetical order, the definition “Electronic Subcontracting Reporting System (eSRS)” to read as follows:

**19.701 Definitions.**

\* \* \* \* \*

“*Electronic Subcontracting Reporting System (eSRS)*” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting.

\* \* \* \* \*

■ 6. Amend section 19.704 by—

■ a. Revising paragraphs (a)(10)(iii) and (a)(10)(iv);

■ b. Adding paragraphs (a)(10)(v) and (a)(10)(vi);

■ c. Revising paragraphs (d) introductory text and (d)(2);

■ d. Amending paragraph (d)(1) by removing “; and” and adding “;” in its place; and

■ e. Adding paragraphs (d)(3) and (d)(4).

■ The revised and added text reads as follows:

**19.704 Subcontracting plan requirements.**

(a) \* \* \*

(10) \* \* \*

(iii) Submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS;

(iv) Ensure that its subcontractors with subcontracting plans agree to

submit the ISR and/or the SSR using the eSRS;

(v) Provide its prime contract number and its DUNS number and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number and its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

\* \* \* \* \*

(d) A commercial plan (as defined in 19.701) is the preferred type of subcontracting plan for contractors furnishing commercial items. Once a contractor’s commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item. The contractor shall—

\* \* \* \* \*

(2) Submit a new commercial plan, 30 working days before the end of the Contractor’s fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;

(3) When the new commercial plan is approved, provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan; and

(4) Comply with the reporting requirements stated in paragraph (a)(10) of this section by submitting one SSR in eSRS, for all contracts covered by its commercial plan. This report will be acknowledged or rejected in eSRS by the contracting officer who approved the plan. The report shall be submitted within 30 days after the end of the Government’s fiscal year.

■ 7. Amend section 19.705–2 by adding paragraph (e) to read as follows.

**19.705–2 Determining the need for a subcontracting plan.**

\* \* \* \* \*

(e) A contract may have no more than one plan. When a modification meets

the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

■ 8. Amend section 19.705–6 by adding paragraph (h) to read as follows.

**19.705–6 Postaward responsibilities of the contracting officer.**

\* \* \* \* \*

(h) Acknowledging receipt of or rejecting the ISR and the SSR in the eSRS. Acknowledging receipt does not mean acceptance or approval of the report. The report shall be rejected if it is not adequately completed. Failure to meet the goals of the subcontracting plan is not a valid reason for rejecting the report.

**19.705–7 [Amended]**

■ 9. Amend section 19.705–7 in paragraph (d) last sentence by removing “a failure to submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations;” and adding “a failure to submit the ISR, or the SSR, using the eSRS, or as provided in agency regulations;” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 10. Amend section 52.212–5 by revising the date of the clause, and paragraphs (b)(8)(i) and (b)(12) to read as follows:

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

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (APR 2008)

\* \* \* \* \*

(b) \* \* \*

\_\_\_\_ (8)(i) 52.219–9, Small Business Subcontracting Plan (APR 2008) (15 U.S.C. 637(d)(4).

\* \* \* \* \*

\_\_\_\_ (12) 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

\* \* \* \* \*

■ 11. Amend section 52.219–9 by—

■ a. Revising the date of the clause;

■ b. Adding in paragraph (b) the definition “Electronic Subcontracting Reporting System”;

■ c. Revising paragraph (d)(5);

- d. Amending paragraph (d)(9) by adding “with further subcontracting possibilities” after “facility”;
- e. Revising paragraphs (d)(10)(iii) and (d)(10)(iv);
- f. Adding paragraphs (d)(10)(v) and (d)(10)(vi);
- g. Amending paragraph (d)(11)(i) by removing “PRO-Net” and adding “CCR” in its place;
- h. Revising paragraph (g); and
- i. Redesignating paragraphs (i) and (j) as paragraphs (k) and (l), adding new paragraphs (i) and (j), and revising the newly designated paragraph (l).
- The revised and added text reads as follows:

**52.219-9 Small Business Subcontracting Plan.**

\* \* \* \* \*

SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)

\* \* \* \* \*

(b) \* \* \*

*Electronic Subcontracting Reporting System (eSRS)* means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

\* \* \* \* \*

(d) \* \* \*

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

\* \* \* \* \*

(10) \* \* \*

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be

in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

\* \* \* \* \*

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

\* \* \* \* \*

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

\* \* \* \* \*

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business

or small disadvantaged business credit from an ANC or Indian tribe.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.  
(End of clause)

- 12. Amend section 52.219–25 by—
- a. Revising the date of the clause; and
- b. Revising paragraphs (a) last sentence and (b);
- The revised and added text reads as follows:

**52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.**

\* \* \* \* \*

**SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (APR 2008)**

(a) \* \* \* The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312,

Small Disadvantaged Business Participation Report, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

(End of clause)

**PART 53—FORMS**

- 13. Revise section 53.219 to read as follows.

**53.219 Small business programs.**

The following form may be used in reporting small disadvantaged business contracting data: *OF 312 (10/00), Small Disadvantaged Business Participation Report.* (See Subpart 19.12.)

**53.301–294 and 53.301–295 [Removed]**

- 14. Remove sections 53.301–294 and 53.301–295.

[FR Doc. E8–8449 Filed 4–21–08; 8:45 am]

**BILLING CODE 6820–EP–S**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 11, 18, 52 and 53**

[FAC 2005–25; FAR Case 2006–033; Item III; Docket 2008–0001; Sequence 7]

**RIN 9000–AK93**

**Federal Acquisition Regulation; FAR Case 2006–033, Revisions to the Defense Priorities and Allocations System (DPAS)**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and to reflect the current provisions of the Defense Priorities and Allocations System (DPAS) regulations

of the Department of Commerce outlined in 15 CFR Part 700.

**DATES:** *Effective Date:* April 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–25, FAR case 2006–033.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Under Title I of the Defense Production Act (50 U.S.C. App. 2061, *et seq.*), the President is authorized to require preferential acceptance and performance of contracts or orders supporting certain approved national defense and energy programs, and to allocate materials, services, and facilities in such a manner to promote these approved programs. Additional priorities authority is found in section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, and 50 U.S.C. 82.

The President delegated the priorities and allocations authorities of the Defense Production Act in E.O. 12919, as amended. The President has delegated the authority to approve a program for priorities and allocations support to the Secretaries of Defense, Energy, and Homeland Security. As part of that delegation, the President designated the Secretary of Commerce to administer the Defense Priorities and Allocations System (DPAS). The Defense Production Act authority has also been extended to support emergency preparedness activities under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195, *et seq.*), and critical infrastructure protection and restoration.

The FAR is revised as follows:

- Subpart 2.101 revised the definition of “national defense” to include a reference to the DPAS definition, which includes critical infrastructure protection and restoration.
  - Subpart 11.6, Priorities and Allocations, is revised to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and the current provisions of the DPAS regulations of the Department of Commerce (see 15 CFR Part 700).
  - Parts 18 and 52 are revised to include the emergency acquisition text.
  - Subpart 53.3 is revised to add changes to Standard Form 26 and 1447.
- The Councils are publishing this rule as a final rule without comment under