

(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

41 U.S.C. 418b, because it implements the President's delegable authorities outlined in the Defense Production Act in Executive Order 12919, amended, which are not subject to negotiation. The FAR changes will not have significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure, or form, or have a significant administrative impact on contractors or offerors.

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 11, 18, 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 2006-033), in 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. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 2, 11, 18, 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 2, 11, 18, 52 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 11, 18, 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 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by revising the definition "National defense" to read as follows:

#### 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

*National defense* means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space, except that for use in Subpart 11.6, see the definition in 11.601.

\* \* \* \* \*

### PART 11—DESCRIBING AGENCY NEEDS

■ 3. Revise sections 11.600 through 11.603 to read as follows:

#### 11.600 Scope of subpart.

This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce regulation in support of approved national defense, emergency preparedness, and energy programs (see 15 CFR part 700).

#### 11.601 Definitions.

As used in this subpart—

*Approved program* means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

*Delegate Agency* means a Government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

*National defense* means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration. (50 U.S.C. App. § 2152).

*Rated order* means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of the DPAS regulation (15 CFR part 700).

#### 11.602 General.

(a) Under Title I of the Defense Production Act of 1950 (50 U.S.C. App. 2061, *et seq.*), the President is authorized to require preferential acceptance and performance of

contracts and orders supporting certain approved national defense and energy programs and to allocate materials, services, and facilities in such a manner as to promote these approved programs.

(b) The President delegated the priorities and allocations authorities of the Defense Production Act in Executive Order 12919. As part of that delegation, the President designated the Secretary of Commerce to administer the DPAS. For more information, check the DPAS website at: [www.bis.doc.gov/dpas](http://www.bis.doc.gov/dpas).

#### 11.603 Procedures.

(a) There are two levels of priority for rated orders established by the DPAS, identified by the rating symbols "DO" and "DX". All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated and unrated orders (see 15 CFR 700.11). The DPAS regulation contains provisions concerning the elements of a rated order (see 15 CFR 700.12); acceptance and rejection of rated orders (see 15 CFR 700.13); preferential scheduling (see 15 CFR 700.14); extension of priority ratings (flowdown) (see 15 CFR 700.15); changes or cancellations of priority ratings and rated orders (see 15 CFR 700.16); use of rated orders (see 15 CFR 700.17); and limitations on placing rated orders (see 15 CFR 700.18).

(b) The Delegate Agencies have been given authority by the Department of Commerce to place rated orders in support of approved programs (see Schedule I of the DPAS). Other U.S. Government agencies, Canada, and foreign nations may apply for priority rating authority.

(c) Rated orders shall be placed in accordance with the provisions of the DPAS.

(d) Agency heads shall ensure compliance with the DPAS by contracting activities within their agencies.

(e) Agency heads shall provide contracting activities with specific guidance on the issuance of rated orders in support of approved agency programs, including the general limitations and jurisdictional limitations on placing rated orders (see 15 CFR 700.18 and Executive Order 12919).

(f) Contracting officers shall follow agency procedural instructions concerning the use of rated orders in support of approved agency programs.

(g) Contracting officers, contractors, or subcontractors at any tier, that experience difficulty placing rated orders, obtaining timely delivery under

rated orders, locating a contractor or supplier to fill a rated order, ensuring that rated orders receive preferential treatment by contractors or suppliers, or require rating authority for items not automatically ratable under the DPAS, should promptly seek special priorities assistance in accordance with agency procedures (see 15 CFR 700.50–700.55 and 700.80).

(h) The Department of Commerce may take specific official actions (Ratings Authorizations, Directives, Letters of Understanding, Administrative Subpoenas, Demands for Information, and Inspection Authorizations) to implement or enforce the provisions of the DPAS (see 15 CFR 700.60–700.71).

(i) Contracting officers shall report promptly any violations of the DPAS in accordance with agency procedures to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, Room 3876, Washington, DC 20230, Ref: DPAS; telephone: (202) 482–3634 or fax: (202) 482–5650.

#### **11.604 [Amended]**

■ 4. Amend section 11.604 by removing from paragraph (a) the words “Defense Use” and adding “Defense, Emergency Preparedness, and Energy Program Use” in its place.

### **PART 18—EMERGENCY ACQUISITIONS**

■ 5. Revise section 18.109 to read as follows:

#### **18.109 Priorities and allocations.**

The Defense Priorities and Allocations System (DPAS) supports approved national defense, emergency preparedness, and energy programs and was established to facilitate rapid industrial mobilization in case of a national emergency. (See Subpart 11.6.)

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

■ 6. Amend section 52.211–14 by revising the section heading, provision heading and date, and provision to read as follows:

#### **52.211–14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.**

\* \* \* \* \*

NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008)

Any contract awarded as a result of this solicitation will be [ ] DX rated order; [ ] DO rated order certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and

Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.] (End of provision)

#### **52.211–15 [Amended]**

■ 7. Amend section 52.211–15 by revising the date of the clause to read (APR 2008); and by removing from the clause the words “defense use” and adding “defense, emergency preparedness, and energy program use” in its place.

### **PART 53—FORMS**

#### **53.214 [Amended]**

■ 8. Amend section 53.214 by removing from paragraph (a) “(4/85)” and adding “(APR 2008)” in its place; and by removing from paragraph (d) “(Rev. 3/2005)” and adding “(APR 2008)” in its place.

#### **53.215–1 [Amended]**

■ 9. Amend section 53.215–1 by removing from paragraph (a) “(Rev. 4/85)” and adding “(APR 2008)” in its place.

■ 10. Revise section 53.301–26 to read as follows:

#### **53.301–26 Award/Contract.**

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF PAGES		
2. CONTRACT (Proc. Inst. Ident.) NO.		3. EFFECTIVE DATE		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.			
5. ISSUED BY		CODE	6. ADMINISTERED BY (If other than Item 5)		CODE		
7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				8. DELIVERY			
				<input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)			
9. DISCOUNT FOR PROMPT PAYMENT				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN			
				ITEM			
11. SHIP TO/MARK FOR		CODE	12. PAYMENT WILL BE MADE BY		CODE		
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:			14. ACCOUNTING AND APPROPRIATION DATA				
<input type="checkbox"/> 10 U.S.C. 2304(c) (      ) <input type="checkbox"/> 41 U.S.C. 253(c) (      )							
15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT		
<b>15G. TOTAL AMOUNT OF CONTRACT</b>					\$		
<b>16. TABLE OF CONTENTS</b>							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE</b>							
17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or Print)				20A. NAME OF CONTRACTING OFFICER			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA		20C. DATE SIGNED	
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)			

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Previous edition is usable

**STANDARD FORM 26** (REV. 4/2008)  
Prescribed by GSA - FAR (48 CFR) 53.214(a)

■ 11. Revise section 53.301-1447 to read as follows:

**53.301-1447 Solicitation/Contract.**

<b>SOLICITATION/CONTRACT</b>				1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE OF			
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27											
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. SOLICITATION NUMBER		5. SOLICITATION TYPE <input type="checkbox"/> SEALED BIDS (IFB) <input type="checkbox"/> NEGOTIATED (RFP)		6. SOLICITATION ISSUE DATE			
7. ISSUED BY _____ CODE _____				8. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE:    % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: _____ SIZE STANDARD: _____							
9. (AGENCY USE) _____ NO COLLECT CALLS											
10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION) <input type="checkbox"/> SUPPLIES <input type="checkbox"/> SERVICES											
11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.					12. ADMINISTERED BY _____ CODE _____						
13. CONTRACTOR OFFEROR		CODE _____		FACILITY CODE _____		14. PAYMENT WILL BE MADE BY _____ CODE _____					
TELEPHONE NUMBER _____ DUNS NUMBER _____ <input type="checkbox"/> CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER					15. PROMPT PAYMENT DISCOUNT						
					16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10 U.S.C. 2304 <input type="checkbox"/> 41 U.S.C. 253 (    )    (    )						
17. ITEM NO.		18. SCHEDULE OF SUPPLIES/SERVICES		19. QUANTITY		20. UNIT		21. UNIT PRICE		22. AMOUNT	
23. ACCOUNTING AND APPROPRIATION DATA								24. TOTAL AWARD AMOUNT (FOR GOVERNMENT USE ONLY)			
25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN. <input type="checkbox"/>						26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: <input type="checkbox"/>					
27. SIGNATURE OF OFFEROR/CONTRACTOR						28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)					
NAME AND TITLE OF SIGNER (TYPE OR PRINT)				DATE SIGNED		NAME OF CONTRACTING OFFICER				DATE SIGNED	

NO RESPONSE FOR REASONS CHECKED			
	CANNOT COMPLY WITH SPECIFICATIONS		CANNOT MEET DELIVERY REQUIREMENT
	UNABLE TO IDENTIFY THE ITEM(S)		DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
OTHER ( <i>Specify</i> )			
<input type="checkbox"/> WE DO	<input type="checkbox"/> WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEMS INVOLVED		
NAME AND ADDRESS OF FIRM ( <i>Include Zip Code</i> )		SIGNATURE	
		TYPE OR PRINT NAME AND TITLE OF SIGNER	
<p style="margin-top: 0;">FROM:</p> <p style="margin-top: 100px; margin-left: 150px;">TO:</p> <p style="margin-top: 100px;">SOLICITATION NO. _____</p> <p style="margin-top: 10px;">DATE AND LOCAL TIME _____</p> <div style="text-align: right; margin-top: 100px;"> <p>AFFIX STAMP HERE</p> </div>			