

**52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.**

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WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010)

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are funded in whole or in part with Recovery Act funds.

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**52.212-4 [Amended]**

■ 5. Amend section 52.212-4 by removing the clause date “(Mar 2009)” and adding “(JUN 2010)” and removing from paragraph (r) “Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act;”.

■ 6. Amend section 52.212-5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(3) “(Mar 2009)” and adding “(JUN 2010)” in its place; and

■ c. Revising paragraph (e)(1)(ii)(B) of Alternate II.

The revised text reads as follows:

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

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUN 2010)

\* \* \* \* \*

*Alternate II* \* \* \* \*

\* \* \* \* \*

(e)(1) \* \* \*

(ii) \* \* \*

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5).

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■ 7. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(2)(vi) to read as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

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TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (JUN 2010)

(a) \* \* \*

(2) \* \* \*

(vi) 52.244-6, Subcontracts for Commercial Items (JUN 2010).

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■ 8. Amend section 52.244-6 by revising the date of the clause and paragraph (c)(1)(ii) to read as follows:

**52.244-6 Subcontracts for Commercial Items.**

\* \* \* \* \*

SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2010)

\* \* \* \* \*

(c)(1) \* \* \*

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

\* \* \* \* \*

[FR Doc. 2010-14189 Filed 6-15-10; 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 2005-42; FAR Case 2005-040; Item II; Docket 2008-0001, Sequence 26]

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:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to require that contractors’ 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.

**DATES:** *Effective Date:* July 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. For information pertaining to status or publication

schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-42, FAR Case 2005-040.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Councils published an interim rule in the **Federal Register** at 73 FR 21779 on April 22, 2008, to implement in the FAR the use of the Electronic Subcontracting Reporting System (eSRS) to fulfill small business subcontracting reporting requirements. The eSRS is a web-based system under the umbrella of the Integrated Acquisition Environment. It replaces Standard Forms 294 and 295 as the mechanism for submitting reports required by the small business subcontracting program. 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.

The interim rule also amended FAR subpart 19.7 and related clauses to clarify existing small business subcontracting program requirements.

The FAR interim rule was not intended to change any of the requirements for the individual or summary subcontract reports. Its purpose was only to require submission of subcontract reports electronically, rather than in hardcopy.

Nineteen commenters submitted comments on the interim rule. A discussion of those comments and the changes made to the rule as a result of those comments is provided below.

The comments will be discussed in three overall categories. Those that pertain to the FAR rule itself, those that do not pertain to the FAR rule, and those that were submitted in response to the Councils’ question in the **Federal Register** notice for the interim rule concerning whether the reporting period covered by a Summary Subcontract Report for a commercial subcontracting plan should remain the Government’s fiscal year, or be the contractor’s fiscal year.

The comments submitted that did not pertain to the FAR rule itself covered such things as changes that need to be made to eSRS to ensure that the instructions in that electronic system are consistent with this FAR rule, changes that need to be made to electronic business systems that interface with eSRS, and changes that need to be made to regulations that supplement the FAR. These comments will be referred to the appropriate Government officials for their consideration. These comments will not be addressed individually in this

**Federal Register** notice, except when it is necessary to address them in order to clarify existing policy.

#### Comments pertaining to the FAR rule.

*Comment:* One commenter recommended revising FAR 19.704(a)(10)(v) and 19.704(a)(10)(vi) by replacing “Government or Contractor official” with “Government official (for SSRs) and the Prime’s Contracting official (for ISRs).” The reason for the change is that the Government reviews all Summary Subcontract Reports (SSRs) submitted by prime contractors and subcontractors, and whoever awarded the contract/subcontract is responsible for acknowledging receipt of, or rejecting, the Individual Subcontract Report (ISR). The contractor, therefore, must provide both the Government official’s and the prime’s contracting official’s e-mail address to be consistent with FAR 19.705–6(h) and FAR 52.219–9(l)(1)(iii)(B) for ISRs, and (1)(2)(F) for SSRs.

*Response:* The Councils concur that both e-mail addresses need to be provided to subcontractors with subcontracting plans since these subcontractors will be required to submit both an ISR and an SSR. The Councils further believe that the proposed revisions to FAR 19.704 will make this aspect of the rule clearer and have revised the language in the final rule accordingly. The contractor must provide the email address of the official responsible for acknowledging receipt of or rejecting the reports, to be consistent with FAR 19.705–6(h) and FAR 52.219–9(l)(1)(iii)(B) for ISRs, and 52.219–9(l)(2)(F) for SSRs. Similar changes have been made to 52.219–9(d)(10)(v) and (vi).

*Comment:* Two commenters recommended revising the second sentence in FAR 19.705–6(h) to provide examples of what constitutes a report not being adequately completed (*i.e.*, errors, omissions, and incomplete data).

*Response:* Concur. The Councils believe that adding a list of examples such as, “errors, omissions, and incomplete data”, should help clarify what is meant by not adequately completed. FAR 19.705–6(h) has been revised accordingly in the final rule.

Additionally, it should be noted that acknowledging receipt does not mean acceptance or approval of the report.

*Comment:* One commenter questioned the need to clarify in FAR clause 52.219–9 that “subcontracting plans are not required from subcontractors when the prime contract contains the FAR clause at 52.212–5, Contract Terms and Conditions Required to Implement

Statutes or Executive Orders—Commercial Items”. The commenter believes that FAR clause 52.219–9 should be included in contracts for commercial items.

*Response:* The clarification is consistent with FAR 52.212–5(e)(1) “Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items.” The current FAR clause 52.212–5(e)(1) includes FAR clause 52.219–8 but does not include clause 52.219–9.

*Comment:* One commenter proposes changing FAR 52.219–9(l)(1) in order to make it consistent with FAR 19.705–6, Postaward Responsibilities of the Contracting Officer, and to enforce the cut-off date for report submission. The commenter recommends changing FAR 52.219–9(l)(1) from: “(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,” to: “(1) ISR. The report is required for each contract containing an individual subcontract plan and shall be submitted to the contracting officer who approved the subcontracting plan. Failure to submit or late submission of reports shall be a breach of contract and will be documented as past performance for future acquisitions.”

*Response:* Partially concur. The Councils do not agree with adding the sentence concerning failure to submit or late submission of reports. Paragraph (k)(2) of FAR clause 52.219–9 already addresses the breach of contract issue when the contractor or subcontractor fails to comply in good faith with the approved subcontracting plan. Reporting is an element of the plan.

Although the Councils have not adopted the changes that the commenter has recommended to the first two sentences in this paragraph of the interim rule, the Councils have revised the language in the final rule so that this paragraph does not address to whom the ISR is submitted. That issue is already adequately addressed in paragraph (l)(1)(iii) of FAR clause 52.219–9 and does not need to be addressed in paragraph (l)(1). Paragraph (l)(1)(iii) of FAR clause 52.219–9 is completely consistent with FAR 19.705–6(h).

*Comment:* One commenter recommended revising the second sentence of FAR clause 52.219–9(l)(1) to read, “The report is required for each contract containing an individual

subcontracting plan and shall be submitted to the Contracting Officer from the Government agency who awarded the prime contract or as prescribed by agency regulations.” The commenter stated that the rationale for this revision is to make this paragraph of the clause consistent with paragraphs (l)(1)(iii)(A) and (l)(2)(i)(F) of the clause. These paragraphs state that the authority to acknowledge receipt or reject ISRs resides with the Contracting Officer, and for SSRs resides with the Government agency awarding the prime contracts.

*Response:* Nonconcur. The Councils believe it is not necessary for this sentence to address to whom the report is submitted. That issue is already adequately addressed in paragraph (l)(1)(iii) of FAR clause 52.219–9 and does not need to be addressed in paragraph (l)(1) of the clause. Accordingly, this sentence has been revised in the final rule and now reads, “The report is required for each contract containing an individual subcontract plan.”

*Comment:* One commenter recommended revising FAR 52.219–9(l)(2)(i)(F) to read, “The authority to acknowledge or reject SSRs in eSRs including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding prime contracts or as prescribed in agency regulations.” The rationale the commenter provided for adding the words, “or as prescribed in agency regulations,” is that the DoD Comprehensive Subcontracting Plan (Test Program) covers all Military Service and Defense Agency contracts. The Defense Contract Management Agency has the responsibility to perform management and oversight of plans included in this program, as delegated by the Military Services and Defense Agencies. Therefore, the Government agency awarding the prime contract would not be the entity acknowledging or rejecting SSRs under the DoD Comprehensive Subcontracting (Test Program).

*Response:* The Councils do not agree with adding the words, “or as prescribed in agency regulations” to this paragraph in the FAR clause. The Councils have, however, revised the language in the final rule to add the words, “unless stated otherwise in this contract.” This language will alert the contractor to the fact that although authority to acknowledge or reject SSRs resides with the Government agency awarding the contracts, that agency may delegate the authority to another agency, but if this occurs, the information on what

Government entity has the authority will be contained in the contract itself.

*Comment:* One commenter stated that paragraph (d)(10)(iii) of FAR clause 52.219-9, Small Business Subcontracting Plan, adds the requirement to report information for Historically Black Colleges and Universities and Minority Institutions (HBCU/MI); however, HBCU/MIs are not included elsewhere in the clause when the clause references the various programs (*i.e.*, small business, HUBZones, *etc.*) and what should be contained in a subcontracting plan.

Paragraphs (c), (d)(1) to (9), (d)(11), (e), and Alternates I and II, refer to the requirements of a subcontracting plan. Defense Federal Acquisition Regulation Supplement (DFARS) 226.370-8, Goals and incentives for subcontracting with HBCU/MIs, states that when reviewing subcontracting plans submitted under FAR clause 52.219-9, Small Business Subcontracting Plan, the contracting officer shall ensure the contractor included awards to HBCU/MIs in the Small Disadvantaged Business (SDB) goal. In addition, DFARS 219.704, Subcontracting plan requirements, states the SDB goal shall include subcontracts with HBCU/MI, in addition to subcontracts with SDB concerns.

There is a disconnect between what is required on the report for the Department of Defense, Coast Guard, and National Aeronautics and Space Administration and what is required in the subcontracting plan. Recommend either including or deleting HBCU/MI throughout the clause for consistency. If deleting from the FAR clause, consider including coverage in the DFARS.

*Response:* The commenter states that the rule added the requirement to report information for HBCUs/MIs and suggests revising FAR clause 52.219-9 to add HBCUs/MIs to the entities listed in the requirements for subcontracting plans, or remove the reference to HBCUs/MIs in the reporting requirements. The commenter states that either proposed change would make the language consistent with the other parts of the clause.

The Councils do not concur. This rule did not add the requirement to report information for HBCUs/MIs. The language in FAR clause 52.219-9(d)(10)(iii) concerning reporting subcontract awards to HBCUs/MIs was already in the FAR. The requirement was already in place for the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration. Standard Forms 294 and 295 both required these departments to report on awards to HBCUs/MIs.

The purpose of this rule is only to require the use of eSRS rather than Standard Forms 294 and 295, it is not to change any of the requirements for subcontracting plans or subcontract reports.

*Comment:* One commenter recommended modifying the second sentence in paragraph (l)(2)(iii) of FAR clause 52.219-9, Small Business Subcontracting Plan, to read, "The report, which can be submitted into eSRS, shall include..."

*Response:* Nonconcur. The Councils believe that the addition of this language is unnecessary and would lead to confusion. The Year-End Supplementary Report for Small Disadvantaged Businesses is a part of the SSR that is submitted at the close of each fiscal year. The SSR is submitted using eSRS. There is nothing in the FAR that provides for the Year-End Supplementary Report for Small Disadvantaged Businesses to be submitted in any way other than by using eSRS. If the words, "which can be submitted into eSRS," were added to the second sentence in FAR clause 52.219-9(l)(2)(iii), it would suggest that there is some other means for submitting this information and there is not.

*Comment:* One commenter recommended removing the last sentence of paragraph (b) of FAR clause 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and replacing it with the following: "If this contract contains an Individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report into eSRS at the completion of the contract." The commenter indicated that in this instance where the contractors will be using eSRS to submit the Individual Subcontract Report (ISR) it would be consistent to require the contractors to use eSRS to submit the Small Disadvantaged Business Participation Report. The commenter indicated that having the information submitted electronically would facilitate access to the information by multiple Government organizations.

*Response:* Nonconcur. The Councils do not believe it is necessary to require that the Small Disadvantaged Business Participation Report be submitted using eSRS when it is submitted with the final ISR. It is already likely that in this instance contractors will use eSRS to submit the Small Disadvantaged Business Participation Report, since it is expected to be a less burdensome means of submitting that report for contractors who are also submitting an ISR. Further, not all contractors required to submit

Small Disadvantaged Business Participation Reports will also be required to submit ISRs, so this revision would not result in uniform electronic submission of the Small Disadvantaged Business Participation Report. The benefits to the Government of having the reports submitted electronically are not as great if not all of the reports are required to be submitted in that manner. Therefore, the Councils do not believe that revising the language in the interim rule to require some contractors to submit the Small Disadvantaged Business Participation Report in a particular manner is warranted.

*Comment:* One commenter has suggested revising paragraph (d)(10)(iii) of FAR clause 52.219-9 to include "Alaska Native Corporations and Indian Tribes that are not Small Businesses" and "Alaska Native Corporations and Indian Tribes that have not been certified by the Small Business Administration as Small Disadvantaged Businesses" to be consistent with (d)(1)(i) of the clause.

*Response:* The Councils acknowledge the commenter's concern that paragraph (d)(1)(i) of FAR clause 52.219-9 is inconsistent with paragraph (d)(10)(iii). The Councils have revised paragraph (d)(10)(iii) in the final rule to clarify that awards to Alaska Native Corporations and Indian Tribes shall be reported as awards to small business and small disadvantaged business concerns.

*Comment:* One commenter stated that the first sentence in FAR 19.704(a)(2) should be revised to read "Submit a new commercial plan, 30 working days before the end of the contractor's fiscal year, or 30 days prior to the expiration of the current subcontracting plan to the contracting officer."

*Response:* The Councils do not concur. The commenter did not provide any rationale for making this change. FAR 19.704(a)(2) does not have to do with submitting commercial plans. The Councils believe the commenter means FAR 19.704(d)(2). The commercial subcontracting plan covers the contractor's fiscal year. Commercial plans, therefore, expire at the end of the contractor's fiscal year. Adding, "or 30 days prior to the expiration of the current subcontracting plan" would, therefore, be redundant.

*Comment:* One commenter stated that FAR 19.705-2(e) states that a contract may have no more than one plan. This will not work for 20 year multiple award contracts. The commenter recommended having a new individual plan prior to each 5 year option to allow for other changes in addition to goals (including a change in the point of contact, or the items that are being

subcontracted and the concerns that will receive the subcontracts, etc.)

*Response:* The Councils do not concur. The FAR language means that a contract may have no more than one plan at any given time. There should not be one plan that covers the contract at time of award and then additional plans covering work that is added to the contract after award.

A contracting officer may negotiate changes to the subcontracting plan whenever they are necessary. The FAR does not prohibit having the plan change during the course of the contract, it merely prohibits having more than one plan apply to the contract at a time.

*Comment:* One commenter indicated that the contracting officer is responsible for action on Individual Subcontract Reports and Summary Subcontract Reports (SSRs) in eSRS. The current General Services Administration, Office of Small Business Utilization, Agency Coordinator, has been delegated this function for SSRs in lieu of the contracting officer. The commenter wants the contracting officer that awards a commercial subcontracting plan to review SSRs for compliance. However, the commenter believes it is better to have a central point rather than each regional office responsible for accepting/rejecting the data which is sent to Congress.

*Response:* The Councils note the comment. The commenter did not provide any particular recommendations. It is necessary to have the contracting officer that approved the commercial subcontracting plan acknowledge receipt of, or reject, the SSR because that individual is responsible for the contractor complying with that subcontracting plan, and submitting the SSR is a requirement under the plan. Contracting officers, however, may delegate duties, as provided in agency procedures. Further, eSRS is the central point for collecting the data which is provided to Congress. Government personnel other than the individual that acknowledged receipt of the SSR can review the data in eSRS.

**Comment that does not pertain to the FAR rule but which is being addressed in order to clarify existing policy.**

*Comment:* One commenter believes there is a need to accommodate changing small business size status in eSRS. The commenter stresses the need to ensure that the Federal Procurement Data System—Next Generation (FPDS-NG), eSRS, and agency contract systems are properly updated in order to

ascertain whether a subcontracting plan is required, in the event that a company's size changes from large to small or vice versa, during contract performance.

*Response:* Non-concur. Although it is essential that the Central Contractor Registration, the Online Representations and Certifications Application and FPDS-NG reflect the current size status of the prime contractor, size status is no longer a consideration, in determining the need for a subcontracting plan, after contract award. The requirement for a subcontracting plan resides in the prime contract, and is contingent, among other things, on the size status of the prime contractor at the time of award. If the prime contractor was small at the time of award, there would have been no contractual requirement for a subcontracting plan. Even if the size status of the prime contractor were to change during contract performance, e.g., as a result of growth, a novation agreement, or a non-novated merger acquisition, the terms and conditions of the prime contract regarding the subcontracting plan will not change.

Likewise, if the prime contract was awarded to a business that was other than small and the terms and conditions of the prime contract included a requirement for a subcontracting plan, then this requirement for a subcontracting plan will remain unchanged for the life of the contract, regardless of whether the size status of the prime contractor changes.

Comments on whether the reporting period covered by a SSR for a Commercial Subcontracting Plan should remain the Government's fiscal year or be the contractor's fiscal year.

The purpose of the interim rule was to require that small business subcontract reports be submitted using the eSRS, rather than Standard Form 294 and Standard Form (SF) 295. The FAR interim rule was not intended to change any of the requirements for the individual or summary subcontract reports.

The interim rule retained the requirement that a commercial subcontracting plan cover the contractor's fiscal year but the time period covered by the year-end SSR submitted for that subcontracting plan covers the Government's fiscal year. It also retained the requirement that the year-end SSR for a commercial subcontracting plan be submitted 30 days after the end of the Government's fiscal year.

As stated above, the interim rule retained the FAR requirement (reflected in the SF 295) that the SSR must cover

subcontracting done during the Government's fiscal year.

However, the eSRS, which many agencies and contractors were already using, was deployed with instructions that informed the contractor that the year-end SSR for a commercial subcontracting plan should reflect subcontracting performed during the contractor's fiscal year. The eSRS instructions indicated that all other SSRs, those not tied to a commercial subcontracting plan, should cover the Government's fiscal year.

Since there was a discrepancy between the FAR and the instructions in eSRS itself, the **Federal Register** notice for the interim rule specifically solicited public comment on this issue.

The comments received in response to the question on what period the year-end SSR for a commercial plan should cover, the Government's fiscal year or the contractor's fiscal year, requires a review of the policy on commercial subcontracting plans and the year-end SSRs that are submitted for these plans.

The **Federal Register** notice for the interim rule stated that, "the Councils may consider adding further coverage in the FAR to mirror the instructions that are currently in SFs 294 and 295". The following sentence had been in SFs 294 and 295: "Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports". This sentence has been revised and added to FAR clause 52.219-9 to state "Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas."

Additionally, changes have been made to FAR parts 4, 19, and 53, and a new Alternate III added to FAR clause 52.219-9 to recognize that there is a circumstance under which contractors will need to use SF 294, rather than eSRS, to submit an ISR. If a contract is not reported in the FPDS because reporting it in that system may disclose information that would compromise national security, the contractor will use SF 294 to submit an ISR on that contract rather than submitting an ISR in eSRS.

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 new reporting, recordkeeping or other compliance requirements and the existing requirements pertain only to other than small businesses. The rule only requires that reports that were previously submitted in hardcopy now be submitted electronically.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104–13) applies because this final rule contains information collection requirements. Accordingly, the FAR Secretariat has forwarded a request for approval of a revision to the information collection requirements concerning OMB Control Number 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. chapter 35, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

**List of Subjects in 48 CFR Parts 4, 19, 52, and 53**

Government procurement.

Dated: June 2, 2010.

**Edward Loeb,**

*Acting Director, Acquisition Policy Division.*

■ Accordingly, the interim rule published in the **Federal Register** at 73 FR 21779 on April 22, 2008, is adopted as a final rule with the following changes:

■ 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 4—ADMINISTRATIVE MATTERS**

■ 2. Amend section 4.606 by adding paragraph (c)(5) to read as follows:

**4.606 Reporting Data.**

\* \* \* \* \*

(c) \* \* \*

(5) Actions that, pursuant to other authority, will not be entered in FPDS (*e.g.*, reporting of the information would compromise national security).

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**PART 19—SMALL BUSINESS PROGRAMS**

■ 3. Amend section 19.704 by adding paragraphs (a)(10)(iii)(A) and (a)(10)(iii)(B), and revising paragraphs (a)(10)(v) and (a)(10)(vi) to read as follows:

**19.704 Subcontracting plan requirements.**

(a) \* \* \*

(10) \* \* \*

(iii) \* \* \*

(A) The ISR 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.

(B) The SSR shall be submitted as follows: 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.

\* \* \* \* \*

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

\* \* \* \* \*

**19.705–6 [Amended]**

■ 4. Amend section 19.705–6 by removing from the third sentence in paragraph (h) “completed” and adding “completed, for instance, if there are errors, omissions, or incomplete data” in its place.

■ 5. Amend section 19.708 by revising paragraph (b)(1), and removing from paragraph (b)(2) “Alternate I or II.” and adding “Alternate I, II, or III.” in its place.

The revised text reads as follows:

**19.708 Contract clauses.**

\* \* \* \* \*

(b)(1) Insert the clause at 52.219–9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed \$550,000 (\$1,000,000 for construction of any public facility), and are required to include the clause at 52.219–8, Utilization of Small Business Concerns, unless the acquisition is set aside or is to be accomplished under the 8(a) program. When—

(i) Contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(ii) Contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705–2(d), the contracting officer shall use the clause with its Alternate II.

(iii) The contract action will not be reported in the Federal Procurement Data System pursuant to 4.606(c)(5), the contracting officer shall use the clause with its Alternate III.

\* \* \* \* \*

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

■ 6. Amend section 52.212–5 by revising the date of the clause; removing from paragraph (b)(11)(i) “(Apr 2008)” and adding “(JUL 2010)” in its place; and adding paragraph (b)(11)(iv) 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 (JUL 2010)

\* \* \* \* \*

(b) \* \* \*

(11) \* \* \*

\_\_\_\_\_(iv) *Alternate III* (JUL 2010) of 52.219–9.

\* \* \* \* \*

■ 7. Amend section 52.219–9 by—  
■ a. Revising the date of the clause, and paragraphs (d)(10)(iii), (d)(10)(v), and (d)(10)(vi);

■ b. Adding a sentence to the end of paragraph (l) introductory text.

■ c. Removing from paragraph (l)(1) introductory text “and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned”;

■ d. Removing from paragraph (l)(2)(i)(F) “prime contracts.” and adding “prime contracts unless stated otherwise in the contract.” in its place;

- e. Revising the introductory text of Alternate I and II, respectively; and
- f. Adding Alternate III.

The revised and added text reads as follows:

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

\* \* \* \* \*  
SMALL BUSINESS SUBCONTRACTING  
PLAN (JUL 2010)  
\* \* \* \* \*

(d) \* \* \*

(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 (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), 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;

\* \* \* \* \*  
(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; 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 subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

\* \* \* \* \*

(l) \* \* \* Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed

outside the United States and its outlying areas.

\* \* \* \* \*

*Alternate I (Oct 2001).* As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c) for paragraph (c) of the basic clause:

\* \* \* \* \*

*Alternate II (Oct 2001).* As prescribed in 19.708(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

\* \* \* \* \*

*Alternate III (JUL 2010).* As prescribed in 19.708(b)(1)(iii), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause;

(d)(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit 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 (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), 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; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit 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. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(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.

(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 the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(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.

#### **PART 53—FORMS**

■ 8. Revise section 53.219 to read as follows:

##### **53.219 Small Business Programs.**

(a) 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.)

(b) The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in part 19: SF 294, (Rev. 1/2010) Subcontracting Report for Individual Contracts. SF 294 is authorized for local reproduction.

■ 9. Add section 53.301–294 to read as follows:

##### **53.301–294 Subcontracting Report for Individual Contracts.**

**BILLING CODE 6820–EP–S**

**SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS**  
(See instructions on reverse)

OMB No: 9000-0006  
Expires: 11/30/2010

Public reporting burden for this collection of information is estimated to average 55.34 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Acquisition Policy Division, Regulatory Secretariat, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY, OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: YEAR <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30		
b. STREET ADDRESS					
c. CITY		d. STATE	e. ZIP CODE		
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY (Please check applicable box)					
<input type="checkbox"/> ARMY		<input type="checkbox"/> GSA		<input type="checkbox"/> NASA	
<input type="checkbox"/> NAVY		<input type="checkbox"/> DOE		<input type="checkbox"/> OTHER FEDERAL AGENCY (Specify)	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> DEFENSE CONTRACT MANAGEMENT AGENCY			
7. REPORT SUBMITTED AS (Check one and provide appropriate number)			8. AGENCY OR CONTRACTOR AWARDDING CONTRACT		
<input type="checkbox"/> PRIME CONTRACTOR			a. AGENCY'S OR CONTRACTOR'S NAME		
<input type="checkbox"/> SUBCONTRACTOR			b. STREET ADDRESS		
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS: <input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS			c. CITY		
			d. STATE		e. ZIP CODE

**SUBCONTRACT AWARDS**

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
10b. LARGE BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
10c. TOTAL (Sum of 10a and 10b.)		100.0%		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) (If applicable) (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
14. HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
15. VETERAN-OWNED SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c) (SEE SPECIFIC INSTRUCTIONS)				
17. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT HAVE NOT BEEN CERTIFIED BY THE SMALL BUSINESS ADMINISTRATION AS SMALL DISADVANTAGED BUSINESSES (Dollar Amount) (SEE SPECIFIC INSTRUCTIONS)				
18. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT ARE NOT SMALL BUSINESSES (Dollar Amount) (SEE SPECIFIC INSTRUCTIONS)				

Previous Edition is Not Usable

**STANDARD FORM 294 (REV. 6/2010)**  
Prescribed by GSA-FAR (48 CFR 53.219(a))



19. REMARKS

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20a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

20b. TELEPHONE NUMBER

AREA CODE

NUMBER

**GENERAL INSTRUCTIONS**

1. This report is not required for small businesses.
2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting plans. The Summary Subcontract Report (SSR) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.
3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$550,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually, during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at 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 since the previous report.
5. Only subcontracts involving performance in the United States or its outlying areas should be included in this report with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.
6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless you have been designated to receive an SB and SDB credit from an Alaska Native Corporation (ANC) or Indian tribe.
8. FAR 19.703 sets forth the eligibility requirements for participating in the subcontracting program.
9. Actual achievements must be reported on the same basis as the goals set forth in the contract. For example, if goals in the plan do not include indirect and overhead items, the achievements shown on this report should not include them either.

**SPECIFIC INSTRUCTIONS**

**BLOCK 2:** For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-866-705-5711 or via the Internet at <http://www.dnb.com>. The contractor should be prepared to provide the following information: (i) Company legal business name. (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized. (iii) Company physical street address, city, state and ZIP Code. (iv) Company mailing address, city, state and ZIP Code (if separate from physical). (v) Company telephone number. (vi) Date the company was started. (vii) Number of employees at your location. (viii) Chief executive officer/key manager. (ix) Line of business (industry). (x) Company Headquarters name and address (reporting relationship within your entity).

**BLOCK 4:** Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated on this block.

**BLOCK 5:** Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

**BLOCK 6:** Identify the department or agency administering the majority of subcontracting plans.

**BLOCK 7:** Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

**BLOCK 8:** Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

**BLOCK 9:** Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 16. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

**BLOCKS 10a through 18:** Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 19. The amounts entered in Blocks 10a through 16 should reflect the revised goals.) There are no goals for Blocks 17 and 18. Under "Actual Cumulative," enter actual subcontract achievements (dollars and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards. However, the dollar amounts reported under "Actual Cumulative" must be for the same period of time as the dollar amounts shown under "Current Goal." For a contract with options, the current goal should represent the aggregate goal since the inception of the contract. For example, if the contractor is submitting the report during Option 2 of a multiple year contract, the current goal would be the cumulative goal for the base period plus the goal for Option 1 and the goal for Option 2.

**BLOCK 10a:** Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSB, VOSB, service-disabled VOSB, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs. Include subcontracts awarded to ANCs and Indian tribes that are not small businesses and that are not certified by the SBA as SDBs where you have been designated to receive their SB and SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive SB and SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company.

**BLOCK 10b:** Report all subcontracts awarded to large businesses (LBs) and any other-than-small businesses. Do not include subcontracts awarded to ANCs and Indian tribes that have been reported in 10a above.

**BLOCK 10c:** Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

**BLOCKS 11 - 16:** Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women or veterans).

**BLOCK 11:** Report all subcontracts awarded to SDBs (including WOSB, VOSB, service-disabled VOSBs, and HUBZone SB SDBs). Include subcontracts awarded to ANCs and Indian tribes that have not been certified by SBA as SDBs where you have been designated to receive their SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive their SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company. For DoD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

**BLOCK 12:** Report all subcontracts awarded to WOSBs (including SDBs, VOSBs (including service-disabled VOSBs), and HUBZone SBs that are also WOSBs).

**BLOCK 13:** (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

**BLOCK 14:** Report all subcontracts awarded to HUBZone SBs (including WOSBs, VOSBs (including service-disabled VOSBs), and SDBs that are also HUBZone SBs).

**BLOCK 15:** Report all subcontracts awarded to VOSBs including service-disabled VOSBs (and including SDBs, WOSBs, and HUBZone SBs that are also VOSBs).

**BLOCK 16:** Report all subcontracts awarded to service-disabled VOSBs (including SDBs, WOSBs, and HUBZone SBs that are also service-disabled VOSBs).

**BLOCK 17:** Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 11, but have not been certified by SBA as SDBs.

**BLOCK 18:** Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 10a, but are not small businesses.

**BLOCK 19:** Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSB, service-disabled VOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the six goals were not met.

#### DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

#### DISTRIBUTION OF THIS REPORT

##### For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

##### For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

[FR Doc. 2010-14180 Filed 6-15-10; 8:45 am]

BILLING CODE 6820-EP-C

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 4, 5, 8, 13, and 16**[FAC 2005-42; FAR Case 2009-010; Item  
III; Docket 2009-0010, Sequence 1]

RIN 9000-AL24

**Federal Acquisition Regulation; FAR  
Case 2009-010, American Recovery  
and Reinvestment Act of 2009 (the  
Recovery Act)—Publicizing Contract  
Actions****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 adopted as final, with minor changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Management and Budget (OMB) Memorandum M-09-10, entitled "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," (the Recovery Act) with respect to publicizing contract actions. The OMB issued Memorandum M-09-15, entitled "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," to supplement, amend, and clarify the initial guidance in OMB Memorandum M-09-10.

**DATES:** *Effective Date:* July 16, 2010.

*Applicability Date:* This rule applies on or after the effective date of this rule to: (1) solicitations issued, (2) contracts awarded, (3) orders issued under task and delivery order contracts, and (4) modifications to orders issued under task and delivery order contracts.

**FOR FURTHER INFORMATION CONTACT:** Michael Jackson, Procurement Analyst, at (202) 208-4949, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-42, FAR Case 2009-010.

**SUPPLEMENTARY INFORMATION:****A. Background**

On February 17, 2009, the President signed the Recovery Act. On February 18, 2009, the Director of the Office of Management and Budget (OMB) issued initial implementing guidance, OMB Memorandum M-09-10. One of the provisions of the initial OMB guidance was to provide accountability and transparency relative to publicizing contract actions. The OMB guidance required that the FAR be amended to reflect—

1. Unique requirements for posting of presolicitation notices;
2. Unique requirements for announcing contract awards;
3. Unique requirements for entering awards into the Federal Procurement Data System (FPDS); and
4. Unique requirements for actions that are not fixed-price or competitive.

The OMB Memorandum M-09-15, dated April 3, 2009, entitled "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," supplements, amends, and clarifies the initial guidance issued on February 18, 2009. All significant updates to OMB Memorandum M-09-10 are outlined in section 1.5 of M-09-15. These updates are based on ongoing input received from the public, Congress, State and local government officials, grant and contract recipients, and Federal personnel.

The interim rule was published in the **Federal Register** at 74 FR 14636 on March 31, 2009, with a request for comments by June 1, 2009.

The interim rule implemented section 6.2 of the OMB Memorandum M-09-10. In addition, the interim rule enabled the Governmentwide Point of Entry (GPE) (<https://www.fedbizopps.gov>) to be leveraged for the purpose of fulfilling the requirements of sections 1526(c)(4) and 1554 of Division A of the Recovery Act.

Three respondents submitted seven comments in response to the interim rule.

**B. Responses to Public Comments**

Below are the comments received on the interim rule, along with the responses developed by the Councils.

*1. Comment:* In publicizing postaward notices, the Councils should require that contracting officers publicize the text of the entire contract awarded. A narrative description of the award only would hinder transparency since a summary would omit many key details that are essential benchmarks by which to measure the quality and effectiveness of Government contractors. Without this information, the public, Government

watchdogs, and the news media would have a difficult time identifying waste, fraud, and abuse and excellent contract work, as well. While the Recovery Act specifies that a description of contracts be posted online, the FAR should be amended in order to realize the intent of the Act.

*Response:* The public may obtain copies of contracts using the Freedom of Information Act (FOIA) process in accordance with FAR subpart 24.2. The costs associated with redacting every Recovery Act contract action to guard against improper disclosure of proprietary, business confidential, or national security information would be prohibitive.

*2. Comment:* The case would have contracting officers "post preaward notices for orders exceeding \$25,000 for 'informational purposes' only". On its face, this seems to apply to task and delivery orders placed competitively against multiple-award contract vehicles, such as indefinite-delivery-indefinite-quantity (IDIQ) contracts. Given that the regulations appear to be designed for non-FFP and/or non-competitive actions, can we confirm its justification and application to competitively awarded IDIQ orders?

*Response:* The requirement to post presolicitation and award notices on FedBizOpps GPE applies to all orders with a dollar value exceeding \$25,000 regardless of competition procedures used, including those orders placed under Federal Supply Schedules, Governmentwide acquisition contracts, multiple-agency contracts, blanket purchase agreements, basic ordering agreements, and indefinite delivery type contracts. Additionally, if noncompetitive procedures or non-fixed-price arrangements were used for award of the order, then the contracting officer must provide the rationale required by FAR 5.705(b) in the award notice.

*3. Comment:* The case mandates that FedBizOpps notices "describe supplies and services in a narrative that is clear and unambiguous to the general public." The phrase, "clear and unambiguous to the general public" is itself ambiguous. Will there be supplemental guidance or definitions to avoid inevitable protests based on subjective interpretations of requirements descriptions? Suggest replacing the term "clear and unambiguous to the general public" with specific content elements required to satisfy the goals of providing appropriate information.

*Response:* The phrase "clear and unambiguous to the general public" is being replaced with "clear and concise language" to alleviate some confusion