

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

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

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

17.504 Reporting requirements.

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

PART 18—EMERGENCY ACQUISITIONS

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

18.113 Interagency acquisitions.

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

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

35.017–3 Using an FFRDC.

* * * * *

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

PART 41—ACQUISITION OF UTILITY SERVICES

■ 9. Revise section 41.206 to read as follows:

41.206 Interagency agreements.

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

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

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, and 52

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

RIN 9000–AL77

Federal Acquisition Regulation; Small Disadvantaged Business Self-Certification

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

ACTION: Interim rule with request for comments.

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

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

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

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

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

Case 2009–019” on your attached document.

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

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

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

SUPPLEMENTARY INFORMATION:

A. Background

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

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

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

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

- FAR 19.703, Eligibility requirements for participating in the

program: Amended to add language that allows the contractor to rely on small business concerns to self-represent their status as SDBs for subcontracts.

- FAR 52.219–8, Utilization of Small Business Concerns: Amended to include language that the small business concern can self-represent its SDB status in writing.

- FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting: Amended to allow the contractor to accept written self-representations of small disadvantaged status from subcontractors.

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

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this revision removes a requirement for SDBs to obtain SBA SDB certification prior to award of a subcontract. This change will be beneficial to SDBs because they will no longer have to incur the cost associated with a formal certification process. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–47, FAR Case 2009–019) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the

National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the FAR currently prohibits small business concerns that are not certified by the SBA from participating as SDB concerns for subcontracting. This interim rule implements changes promulgated by the SBA and is necessary for the FAR to be consistent with SBA’s regulations pertaining to SDB certifications. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 19, and 52

Government procurement.

Dated: November 24, 2010.

Millisa Gary,
Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, and 52 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), in the definition “Small disadvantaged business concern”, by—

- a. Revising the introductory text and paragraph (1)(iii);
- b. Amending paragraph (2) by removing the period at the end of the paragraph and adding a semicolon in its place; and
- c. Adding paragraph (3).

The revised and added text reads as follows:

2.101 Definitions.

* * * * *

- (b) * * *
- (2) * * *

Small disadvantaged business concern (except for 52.212–3(c)(4) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(9)(ii), 52.219–22(b)(2), 52.219–22(b)(1)(C), and 52.219–23(a)(3) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), consistent with 13 CFR 124.1002, means an offeror, that is a small business under the size standard applicable to the acquisition; and either—

- (1) * * *

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the CCR Dynamic Small Business Search data base maintained by the Small Business Administration;

* * * * *

(3) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.301–1 [Amended]

■ 3. Amend section 19.301–1 in paragraph (d), in the last sentence, by removing “13 CFR 124.1011” and adding “13 CFR 124.1004” in its place.

■ 4. Amend section 19.703 by removing from paragraph (a)(1) “HUBZone small business,” and adding “HUBZone small business, small disadvantaged business,” in its place; removing from paragraph (a)(2), in the second sentence, “13 CFR 124.1015 through 124.1022” and adding “13 CFR 124.1007 through 124.1014” in its place; and revising paragraph (b) to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor’s status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business concern. The contractor, the contracting officer, or any other interested party can challenge a subcontractor’s size status representation by filing a protest, in accordance with 13 CFR 121.1001 through 121.1008. Protests challenging a subcontractor’s small disadvantaged business representation must be filed in accordance with 13 CFR 124.1007 through 124.1014.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by revising the date of the clause; removing from paragraph (b)(11) “(MAY 2004)”, and adding “(DEC 2010)” in its place; removing from paragraph (e)(1)(ii) “(October 2000)”, and adding “(DEC

2010)” in its place; revising the date of Alternate II; and removing from Alternate II, paragraph (e)(1)(ii)(C) “(MAY 2004)” and adding “(DEC 2010)” in its place.

The revised text reads 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 (DEC 2010)

* * * * *
Alternate II (DEC 2010). * * *
 * * * * *

■ 6. Amend section 52.213–4 by revising the date of the clause, and paragraph (a)(2)(vii) to read as follows:

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

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DEC 2010)

(a) * * *
 (2) * * *

(vii) 52.244–6, Subcontracts for Commercial Items (DEC 2010).

* * * * *

■ 7. Amend section 52.219–8 by—
 ■ a. Revising the date of the clause; and
 ■ b. In paragraph (c), in the definition “Small disadvantaged business concern”, by redesignating paragraphs (1) through (4) as paragraphs (1)(i) through (iv), respectively, and revising the newly redesignated paragraph (1)(iv); and adding paragraph (2).

The revised and added text reads as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (DEC 2010)

* * * * *

(c) * * *

* * * * *

Small disadvantaged business concern

* * *

(1)(i) * * *

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and

meets the SDB eligibility criteria of 13 CFR 124.1002.

* * * * *

■ 8. Amend section 52.219–25 by revising the date of the clause; revising the second sentence of paragraph (a); redesignating paragraph (b) as paragraph (c); and adding a new paragraph (b) to read as follows:

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

* * * * *

Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (DEC 2010)

(a) * * * The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors (see exception in paragraph (b) of this section) through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219–22, Small Disadvantaged Business Status. * * *

(b) For subcontractors that are not certified as a small disadvantaged business by the Small Business Administration, the Contractor shall accept the subcontractor’s written self-representation as a small disadvantaged business, unless the Contractor has reason to question the self-representation.

* * * * *

■ 9. Amend section 52.244–6 by revising the date of the clause; and removing from paragraph (c)(1)(iii) “(MAY 2004)” and adding “(DEC 2010)” in its place.

The revised text reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (DEC 2010)

* * * * *

[FR Doc. 2010–30563 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAC 2005–47; FAR Case 2009–036; Item V; Docket 2010–0109, Sequence 1]

RIN 9000–AL75

Federal Acquisition Regulation; Uniform Suspension and Debarment Requirement

AGENCY: 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 (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010. Section 815 extends the flowdown of the restriction on subcontracting to lower tier subcontractors that have been suspended or debarred, with some exceptions for contracts for the acquisition of commercial items and commercially available off-the-shelf items.

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

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

ADDRESSES: Submit comments identified by FAC 2005–47, FAR Case 2009–036, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–036” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “FAR Case 2009–036”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–036” on your attached document.

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