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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 53

[FAC 2005-51; FAR Case 2009-029; Item II; Docket 2010-0096, Sequence 1]

RIN 9000-AL72

#### Federal Acquisition Regulation; Clarification of Standard Form 26— Award/Contract

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to include clarifications to Standard Form (SF) 26, Award/Contract. This revised form includes changes above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract.

**DATES:** *Effective Date:* May 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-51, FAR Case 2009-029.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 75 FR 54560 on September 8, 2010, to clarify the use of blocks 17 and 18 of the Standard Form (SF) 26, Award/Contract.

FAR 53.214(a) prescribes the SF 26 for use in contracting for supplies and services by sealed bidding (except for construction and architect-engineer services). The SF 26 is used to award sealed bid contracts after obtaining bids using a SF 33, Solicitation, Offer, and Award. FAR 14.408-1(d)(1) specifies that, if an offer made using a SF 33 leads to further changes, the resulting contract must be prepared as a bilateral document using the SF 26. Agencies identified instances in which contracting officers mistakenly checked block 18 when awarding negotiated, not sealed bid contracts, which created the potential for disputes between the agency and contractors. The clarifications provided on the form for when to use blocks 17 and 18 should eliminate this issue.

The changes will not prevent contracting officers from using block 17 of the SF 26 to award negotiated procurements; it will clarify to contracting officers the proper use of block 17 and block 18 and prohibit the use of block 18 of the SF 26 when awarding negotiated procurements. This final rule clarifies the use of block 18 on the SF 26, Award/Contract, and references the new form at FAR 53.214(a) and 53.215-1(a).

No respondents submitted comments on the proposed rule.

##### II. Executive Order 12866 and 13563

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.

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD, GSA, and NASA determined that this rule is not excessively burdensome to the public, and is consistent with FAR drafting conventions.

##### III. 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 it is solely a clarification for the benefit of Government contracting officers and does not make any substantive changes to current policy.

##### IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

##### List of Subjects in 48 CFR Part 53

Government procurement.

Dated: March 24, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide Acquisition Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 53 as set forth below:

#### PART 53—FORMS

■ 1. The authority citation for 48 CFR part 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).

##### 53.214 [Amended]

■ 2. Amend section 53.214 by removing from paragraph (a) “*SF 26 (APR 2008)*” and adding “*SF 26 (Rev. 5/2011)*” in its place.

##### 53.215-1 [Amended]

■ 3. Amend section 53.215-1 by removing from paragraph (a) “*SF 26 (APR 2008)*” and adding “*SF 26 (Rev. 5/2011)*” in its place.

■ 4. Revise section 53.301-26 to read as follows:

##### 53.301-26 Award/Contract.

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<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			
CODE		FACILITY CODE					
11. SHIP TO/MARK FOR		CODE		12. PAYMENT WILL BE MADE BY		CODE	
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)( ) <input type="checkbox"/> 41 U.S.C. 253(c)( )				14. ACCOUNTING AND APPROPRIATION DATA			
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT	
<b>15G. TOTAL AMOUNT OF CONTRACT</b>						<b>\$</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 (SEALED-BID OR NEGOTIATED PROCUREMENT) OR 18 (SEALED-BID PROCUREMENT) 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"/> SEALED-BID AWARD (Contractor is not required to sign this document.) Your bid 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 bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)			
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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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Chapter 1****[Docket FAR 2011-0077, Sequence 3]****Federal Acquisition Regulation;  
Federal Acquisition Circular 2005-51;  
Small Entity Compliance Guide****AGENCIES:** Department of Defense (DOD),  
General Services Administration (GSA),and National Aeronautics and Space  
Administration (NASA).**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-51, which amend the Federal Acquisition Regulation (FAR). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-51, which

precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**DATES:** For effective dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below. Please cite FAC 2005-51 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

**LIST OF RULES IN FAC 2005-51**

Item	Subject	FAR case	Analyst
*I .....	Women-Owned Small Business Program (Interim) (WOSB) .....	2010-015	Morgan.
II .....	Clarification of Standard Form 26—Award/Contract .....	2009-029	Jackson.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005-51 amends the FAR as specified below:

**Item I—Women-Owned Small Business  
(WOSB) Program (FAR Case 2010-015)  
(Interim)**

This interim rule amends the FAR to add subpart 19.15, Women-Owned Small Business Program, which will assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small business (WOSB) concerns.

Agencies may restrict competition to economically disadvantaged women-owned small business (EDWOSB) concerns for contracts assigned a North American Industry Classification

Systems (NAICS) code in an industry in which the Small Business Administration has determined that WOSB concerns are underrepresented in Federal procurement. For NAICS code industries where WOSB concerns are not just underrepresented, but substantially underrepresented, agencies may restrict competition to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

**Item II—Clarification of Standard Form  
26—Award/Contract (FAR Case 2009-  
029)**

This final rule amends the FAR to revise FAR part 53 to amend the

Standard Form (SF) 26, Award/Contract, above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract. The changes will not prevent contracting officers from using block 17 of the SF 26 when awarding negotiated procurements in which the signature of both parties, on a single document, is required; it will only prohibit them from using block 18 of the SF 26 when awarding negotiated procurements.

Dated: March 24, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide  
Acquisition Policy.*

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