

business in the System for Award Management (SAM) if—

- * * * * *
- 9. Amend section 52.219–9 by—
- a. Revising the date of the clause;
- b. Revising paragraphs (c)(2)(i), (c)(2)(ii) introductory text, and (d)(1) introductory text;
- c. In Alternate IV:
- i. Revising the date of the Alternate; and
- ii. Revising paragraphs (c)(2)(i), (c)(2)(ii) introductory text, (d)(1) introductory text, and (d)(15).

The revisions read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (DATE)

* * * * *

(c) * * *

(2)(i) Unless the Contractor has reason to question the representations, it may accept a subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) Unless the Contractor has reason to question the representations, it may accept a subcontractor’s representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

(d) * * *

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a

proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), an Offeror that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

* * * * *

(15) Assurances that the Contractor will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242–5).

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Alternate IV (DATE). * * *

(c) * * *

(2)(i) Unless the Contractor has reason to question the representations, it may accept a subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) Unless the Contractor has reason to question the representations, it may accept a subcontractor’s representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

(d) * * *

(1) Separate goals, expressed in terms of total dollars subcontracted and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of

percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Contractor shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), a Contractor that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

* * * * *

- 10. Amend section 52.244–6 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (c)(1)(x) “(FEB 2024)” and adding “(DATE)” in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (DATE)

* * * * *

[FR Doc. 2024–12501 Filed 6–6–24; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAR Case 2023–013; Docket No. FAR–2023–0013; Sequence No. 1]

RIN 9000–AO36

Federal Acquisition Regulation: HUBZone Program

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a final rule published by the Small Business Administration (SBA) to implement a section of the National

Defense Authorization Act for Fiscal Year 2022.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before August 6, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2023–013 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for “FAR Case 2023–013”. Select the link “Comment Now” that corresponds with “FAR Case 2023–013”. Follow the instructions provided on the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2023–013” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR Case 2023–013” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at carrie.moore@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAR Case 2023–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement regulatory changes made by the SBA in its final rule published on April 10, 2023 (88 FR 21086) to implement section 864 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81). Section 864 authorizes the SBA Office of Hearings and Appeals (OHA) to decide all appeals from formal status protest determinations in connection with the

status of a Historically Underutilized Business Zone (HUBZone) concern. Prior to section 864 and SBA’s final rule, appeals of HUBZone status determinations were decided by the SBA’s Associate Administrator, Office of Government Contracting and Business Development (AA/GC&BD).

This rulemaking proposes to implement SBA’s final rule, dated April 10, 2023, to specify in the FAR that OHA is responsible for deciding all appeals of status protest determinations for a HUBZone concern, identify the information that must be included in an appeal of a HUBZone status protest determination, and remove the requirement for a HUBZone concern to represent its status in the System for Award Management (SAM), as it is no longer necessary since HUBZone concerns are certified by the SBA.

II. Discussion and Analysis

The proposed changes to the FAR and the rationale are summarized as follows:

- Update FAR 19.306 with the title of the office that decides HUBZone protests, and the procedures for appealing a HUBZone status protest decision to align with SBA’s regulations at 13 CFR 126.800 through 126.805 and 13 CFR 134.1301 through 134.1316; and
- Modify FAR provisions 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and 52.219–1, Small Business Program Representations, and FAR clause 52.219–28, Post Award Small Business Program Representation, to remove the existing HUBZone small business concern representation, since HUBZone small business concerns must be certified by the SBA in order to be eligible for HUBZone sole-source awards and awards set aside for HUBZone concerns. The representation is currently in these provisions and clauses as a mechanism for a HUBZone concern to indicate that it will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract. This rulemaking proposes to add this statement to FAR clause 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award, to include the requirement for HUBZone concerns to attempt to maintain the required employment rate of HUBZone employees during performance of the contract as a term and condition of the contract. HUBZone joint ventures will continue to be required to represent their status as the SBA does not certify HUBZone

joint ventures. The definition of HUBZone small business concern in FAR clause 52.219–3 is also updated to conform with the definition of that same term at FAR 2.101.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rulemaking proposes to amend the following provisions and clauses at FAR: 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services; 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.219–1, Small Business Program Representations; 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award, and 52.219–28, Post-Award Small Business Program Rerepresentation. However, this rulemaking does not change the applicability of these provisions and clauses, which continue to apply to contracts valued at or below the SAT, and contracts for commercial products, including COTS items, or commercial services.

This rulemaking proposes to apply section 864 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81) to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, and commercial services, as OHA has the authority, and is the only entity, to decide all HUBZone status protest appeals. As a result, the section must be applied to acquisitions of these types to ensure that all concerns that can appeal a HUBZone status protest decision, regardless of the subject contract’s dollar value or commerciality, have a process for doing so.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from

the provision of law. The FAR Council intends to make a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial products and commercial services contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council intends to make a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy intends to make a determination to apply this statute to acquisitions for COTS items.

IV. Expected Impact of the Rule

This proposed rule is expected to impact Government and contractor operations.

As a result of this proposed rule, interested parties seeking to appeal a HUBZone status protest decision will be required to send the appeal to OHA in lieu of the Associate Administrator, Office of Government Contracting and Business Development. This change in decision authority does not add any burden to or create any savings for the Government or contractors. However, contracting officers, contractors, offerors, and the SBA may save some time in submitting and/or processing these appeal requests due to the clear specification of information that OHA requires in a request for appeal of a HUBZone status protest decision. Contracting officers can reference the information in the FAR text to submit an appeal or advise a protester or protested concern what information

should be included in the appeal request.

In addition, HUBZone small business concerns will no longer be required to represent their status in SAM since HUBZone concerns are required to be certified by the SBA. This representation was maintained to provide a mechanism for a HUBZone concern to represent that it will comply with the employment requirements at 13 CFR 126.200(e)(1); however, an alternative approach was identified, which precludes the need for a representation and reduces the burden on HUBZone concerns. Specifically, in lieu of a representation, HUBZone concerns will be able to agree to attempt to meet the employment requirements at 13 CFR 126.200(e)(1) by submission of an offer and execution of a contract.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 (as amended by E.O. 14094) direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule, if finalized, 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. 601–612, because this proposed rule merely changes the office that decides HUBZone status protest appeals, specifies the information OHA requires in a request to appeal a HUBZone status protest determination, removes the requirement for a HUBZone concern to represent its status in SAM, and it does not impose any additional compliance burden on applicable small business entities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on April 10, 2023,

at 88 FR 21086, to implement section 864 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). This rule also proposes to remove the representation for HUBZone small business concerns, as it is unnecessary since HUBZone concerns must be certified by SBA.

The objective of this rule is to revise the procedures for appealing decisions of HUBZone status protest determinations to align with SBA's regulations. This rule also removes the representation for HUBZone small business concerns as it is unnecessary since HUBZone concerns are required to be certified by SBA. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113. The legal basis for this rule is as stated in the preceding paragraph.

This proposed rule will impact HUBZone small business concerns as they will no longer be required to represent their status in the System for Award Management (SAM). As indicated in SBA's final rule, the change to the HUBZone protest appeals process is procedural in nature and will not impact small entities.

According to the Dynamic Small Business Search, there are 4,465 HUBZone small business concerns certified by SBA; therefore, there are 4,465 HUBZone small business concerns that are currently required to represent their status in SAM. However, the number of concerns that will submit applications to the SBA for HUBZone certification is unknown; therefore, the number of small business entities impacted by this rule may be greater than or less than the 4,465 HUBZone concerns currently certified by SBA.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would accomplish the stated objectives of the applicable statute and that would minimize any significant economic impact of the proposed rule on small entities as the economic impact is not anticipated to be significant.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 610 (FAR Case 2023–013), in correspondence.

VII. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521). This proposed rule does remove one HUBZone representation from FAR provisions 52.212–3, Offeror Representations and Certifications—Commercial Products, and Commercial Services; and 52.219–1, Small Business Program Representations; and FAR clause 52.219–28, Post-Award Small Business Program Rerepresentation, which are covered under two existing information collections approved by OMB.

OMB Control number 9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements, addresses the burden for FAR provision 52.212–3 and FAR provision 52.204–7, System for Award Management, both of which require offerors on Federal contracts to register in SAM. The representations in FAR provision 52.219–1 are implemented in SAM and either FAR provision 52.204–7 or 52.212–3 is included in all solicitations. Therefore, by registering in SAM, as required by either FAR provision 52.204–7 or 52.212–3, an offeror will make the representations included in FAR provision 52.219–1. As a part of SAM registration, offerors complete approximately 35 representations and certifications, including the HUBZone representation to be removed. The burden for FAR provisions 52.204–7 and 52.212–3 is based on an estimate of the time it would take a new offeror to fill in all of the information needed to register in SAM, or an average of 3 hours in total.

OMB Control number 9000–0163, Small Business Size Rerepresentation, addresses the burden for FAR clause 52.219–28, which requires contractors to rerepresent their size and socioeconomic status in the SAM at certain times. The clause contains eight representations that must be updated in SAM, including the HUBZone representation to be removed. The burden for this clause is based on an estimate of the time it will take a contractor to log into SAM, verify or update their responses to these 8 representations, and email the contracting officer when complete, or an average of 30 minutes in total.

Verifying or updating the HUBZone representation takes only minutes and accounts for a very small portion of the overall burden of the affected provisions

and clause. It is reasonable to assume that, even after removing the HUBZone representation, the average estimated burden per SAM registration or rerepresentation is still accurate. For these reasons, OMB Control numbers 9000–0163 and 9000–0189 were not revised to account for the removal of the HUBZone representation.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 19 and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 19—SMALL BUSINESS PROGRAMS

- 2. Amend section 19.306 by—
 - a. Adding a heading to paragraph (b);
 - b. Revising paragraph (b)(2);
 - c. Adding a heading to paragraphs (c), (d), (f) and (g);
 - d. Revising paragraph (i) introductory text, (i)(1), (i)(2), (i)(3) introductory text, (i)(3)(iii), and (i)(4);
 - e. Redesignate paragraphs (i)(5) and (i)(6) as paragraphs (i)(6) and (i)(7);
 - f. Adding a new paragraph (i)(5);
 - g. Revising newly redesignated paragraphs (i)(6) introductory text, (i)(6)(ii), and (iii); and
 - h. Revising paragraphs (j), (k), (l), and (m).

The revisions and additions read as follows:

19.306 Protesting a firm’s status as a HUBZone small business concern.

* * * * *

(b) *General.* * * *

(2) The Director of SBA’s Office of HUBZone (D/HUB) will determine whether the concern has certified HUBZone status. If SBA upholds the protest, SBA will remove the concern’s HUBZone status in the Dynamic Small Business Search (DSBS). SBA’s protest regulations are found in subpart H “Protests” at 13 CFR 126.800 through 126.805 and at subpart M “Rules of Practice for Appeals of Protest Determinations Regarding the Status of a Concern as a Certified HUBZone Small Business Concern” at 13 CFR 134.1301 through 134.1316.

- (c) *Size status protests.* * * *
- (d) *Protest format.* * * *
- * * * * *
- (f) *Transmittal.* * * *
- (g) *Notice.* * * *
- * * * * *

(i) *After SBA decision.* The SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA’s Office of Hearings and Appeals (OHA) pursuant to 13 CFR 134.1301 through 13 CFR 134.1316.

(1) If the contracting officer has withheld contract award and the D/HUB has determined that the protested concern is an eligible HUBZone or dismissed all protests against the protested concern, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the initial determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award and the (D/HUB) has sustained the protest and determined that the protested concern is ineligible, and a timely OHA appeal has not been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with paragraph (h)(1)(ii)(B) of this section, awarded the contract, and the D/HUB ruling sustaining the protest is received after award, and a timely OHA appeal has not been filed, then—

* * * * *

(iii) After SBA removes the concern’s designation as a certified HUBZone small business concern in DSBS, the contracting officer shall update the Federal Procurement Data System (FPDS) to reflect the final decision of the D/HUB.

(4) If the contracting officer has made a written determination in accordance with paragraph (h)(1)(ii)(B) of this section, awarded the contract, the D/HUB has sustained the protest and determined that the concern is not a HUBZone small business, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If the contracting officer has withheld contract award, the D/HUB has sustained the protest and determined that the protested concern is ineligible, and a timely OHA appeal has been filed, the contracting officer shall either—

(i) Withhold award until an OHA decision is rendered; or
 (ii) Award the contract, if the contracting officer determines in writing that there is an immediate need to award the contract and that waiting for the OHA decision will be disadvantageous to the Government.
 (6) If OHA affirms the decision of the D/HUB, finding the protested concern is ineligible, and contract award has occurred—

* * * * *

(ii) SBA will remove the concern’s designation as a certified HUBZone small business concern in DSBS. The concern is not permitted to submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal; and

(iii) After SBA removes the concern’s designation as a certified HUBZone small business concern in DSBS, the contracting officer shall update FPDS to reflect the OHA decision.

* * * * *

(j) *Appeals of HUBZone status determinations.* The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with OHA. OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. OHA will dismiss any untimely appeal.

(k) *The appeal must be in writing.* The appeal must include the following information—

- (1) A copy of the protest determination;
- (2) The date the appellant received the protest determination;
- (3) A statement that the petitioner is appealing a HUBZone status protest determination issued by the D/HUB;
- (4) A full and specific statement that addresses why the HUBZone status protest determination is alleged to be based on a clear error of fact or law, together with information supporting such allegation;
- (5) The solicitation number, the contract number (if applicable), and the name, address, and telephone number of the contracting officer;
- (6) The name, address, telephone number, facsimile number (if applicable), and signature of the appellant or the appellant’s attorney; and
- (7) A signed certificate of service attached to the appeal in accordance with 13 CFR 134.204.

(l) *Notice.* (1) The party appealing the decision must provide notice of the appeal to—

- (i) The contracting officer;
- (ii) The protested HUBZone small business concern or the original protester, as appropriate;
- (iii) The D/HUB at *hzappeals@sba.gov*; and
- (iv) The SBA Office of General Counsel, Associate General Counsel for Procurement Law at *OPLservice@sba.gov*.

(2) OHA will dismiss an appeal that does not meet all the requirements of this section. OHA will not consider new evidence in appeals from HUBZone status protest determinations.

(m) *Decision.* OHA will issue a decision in accordance with the timelines specified at 13 CFR 134.1310 through 134.1314. OHA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. The OHA decision is the final decision.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–3 by revising the date of the provision and paragraph (c)(11) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (DATE)

(c) * * *

(11) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that it is, is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: ____.]

* * * * *

■ 4. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(15) and (b)(26) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (DATE)

* * * * *

(b) * * *

(15) 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award (DATE) (15 U.S.C. 657a).

* * * * *

(26) (i) 52.219–28, Post-Award Small Business Program Rerepresentation (DATE) (15 U.S.C. 632(a)(2)).

* * * * *

■ 5. Amend section 52.219–1 by revising the date of the provision and paragraph (c)(9) to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (DATE)

* * * * *

(c) * * *

(9) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that it is, is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: ____.]

* * * * *

■ 6. Amend section 52.219–3 by—
 ■ a. Revising the date of the clause and paragraph (a); and

■ b. Adding a new paragraph (f).

The revision and addition read as follows:

52.219–3 Notice of HUBZone Set-Aside or Sole-Source Award.

* * * * *

Notice of HUBZone Set-Aside or Sole-Source Award (DATE)

(a) *Definition.* “HUBZone small business concern,” as used in this clause, means a small business concern that meets the requirements described in 13 CFR 126.200, is certified by the Small Business Administration (SBA) and designated by the SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) (13 CFR 126.103). The SBA designation also appears in the System for Award Management.

* * * * *

(f) The Contractor agrees that it will attempt to maintain an employment rate

of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract pursuant to 13 CFR 126.200(e)(1).

■ 7. Amend section 52.219–28 by revising the date of the clause and paragraph (h)(9) to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (DATE)

* * * * *

(h) * * *

(9) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it is, is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126. [The

Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.]

[Contractor to sign and date and insert authorized signer's name and title.]

* * * * *

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