

(2) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and

(3) Information identified by the Contractor or blanket purchase agreement holder as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Contractor or blanket purchase agreement holder's price or proposal.

(End of clause)

52.217–12 Reverse Auction Services.

As prescribed in 17.805(c), insert the following clause:

Reverse Auction Services (Aug 2024)

(a) Definitions.

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government, in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, in which offerors see competing offerors' price(s), without disclosure of the competing offeror's identity, and have the opportunity to submit lower priced offers until the close of the auction.

(b) *Duties of the reverse auction service provider.* When providing reverse auction services to the Government, the Contractor shall—

(1) Not assert or imply that it can or will obtain a Government contract for the participants of a reverse auction;

(2) Allow entities to register, at no cost, as potential offerors for any reverse auction conducted on behalf of the Government on the provider's reverse auction platform. As part of the registration process, the Contractor shall allow each entity the opportunity to execute a proprietary data protection agreement with the Contractor; however, the Contractor shall not negotiate terms in the agreement that affect the terms and conditions of a Government solicitation or contract;

(3) Limit access to, use of, and disclosure of Government data and Government-related data.

(i) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued hereunder.

(ii) If authorized by the terms of this contract or a task order or delivery order issued hereunder, any access to, or use or disclosure of, Government data shall only be

for purposes specified in this contract or task order or delivery order.

(iii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iv) These access, use, and disclosure prohibitions and obligations shall survive the expiration or termination of this contract.

(v) The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency. The Contractor shall cooperate with the Contracting Officer to take all measures to protect Government data and Government-related data from any unauthorized disclosure.

(4) Assert no right or license in the data gathered or generated during a reverse auction. Use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(5) Protect from unauthorized use or disclosure and not release outside of the Government any price or proposal information or any source selection information (see Federal Acquisition Regulation (FAR) 2.101) received by the Contractor in relation to a reverse auction. Price or proposal information shall include, but is not limited to—

(i) Contractor bid or proposal information, as defined at FAR 3.104–1;

(ii) Price or proposal information similarly generated for a task order or delivery order or an order under a blanket purchase agreement; and

(iii) Information identified by the reverse auction participant as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the reverse auction participant's price or proposal;

(6) Allow offerors to see the successive lowest price(s) offered in the auction without revealing an offeror's identity;

(7) Not participate as an offeror in any reverse auction, which the Contractor is hosting on behalf of the Government. This prohibition includes participation in a reverse auction by any entity with which the Contractor has a relationship that raises an actual or potential conflict of interest;

(8) At the close of each auction—

(i) Provide the Contracting Officer with the successful offer, along with information that separately identifies the offeror's price and the price for each provider fee or charge included in the total price; and

(ii) Provide the Contracting Officer with all information and documentation received from reverse auction participants in response to the reverse auction.

(End of clause)

[FR Doc. 2024–16281 Filed 7–29–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2024–06; FAR Case 2021–009, Item II; Docket No. FAR–2021–0010; Sequence No. 1]

RIN 9000–AO26

Federal Acquisition Regulation: Protests of Orders Set Aside for Small Business

AGENCY: 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 implement regulatory changes made by the Small Business Administration to update and clarify requirements associated with size and socioeconomic status protests in connection with multiple-award contract set-asides and reserves, and orders placed under multiple-award contracts.

DATES: Effective August 29, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Dana Bowman, Procurement Analyst, at 202–803–3188 or by email at dana.bowman@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2024–06, FAR Case 2021–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 88 FR 68067 on October 3, 2023, to implement regulatory changes made by the Small Business Administration (SBA) in its final rules published in the **Federal Register** on October 2, 2013 (78 FR 61113), October 16, 2020 (85 FR 66146), and on November 29, 2022 (87 FR 73400). For further details, please see the proposed rule. One respondent submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the

development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The following significant changes from the proposed rule are made in the final rule: The final rule amends FAR 19.302(d)(1) to add a new paragraph (ii)(C), which reflects language in SBA's October 16, 2020, final rule at 13 CFR 121.1004(a)(2)(ii) and specifies when a protest is due for orders placed under multiple-award contracts where the contracting officer requested rerepresentation for the order. In addition, the final rule FAR text at FAR 19.306(e)(1)(iii), 19.307(e)(1)(v), and 19.308(e)(1)(iii) is amended to clarify when a protest is due when written notification is not required and other communication means are used.

B. Analysis of Public Comments

Comment: The respondent recommended revising the proposed rule text at FAR 19.302(a)(2) to add a reference to SBA's regulations at 13 CFR 121.1001(a)(1) to provide significant clarity to the acquisition community, including small businesses.

Response: The final rule text at FAR 19.302(a)(2) includes a reference to SBA's regulations at 13 CFR 121.1001(a), which specify the parties that may protest the small business representation of an offeror in a specific offer for a contract and the parties that can protest competitive contracts. Therefore, to change the reference at FAR 19.302(a)(2) to 13 CFR 121.1001(a)(1) would omit the inclusion of the remaining paragraphs under paragraph (a), which are relevant to this FAR section.

Comment: The respondent recommended revising the proposed rule FAR text at 19.302(d)(1) to state each of the types of contracts and orders that are subject to the SBA's five-day protest deadline. (See 13 CFR 121.1004(a)(2)).

Response: The final rule FAR text at 19.302(d)(1)(i) and (ii) specifies the types of contracts and orders subject to the SBA five-day protest deadline. In addition, the final rule FAR text at 19.302(d) directs contracting officers to 13 CFR 121.1004 for SBA's regulations on timeliness.

Comment: The respondent stated that the FAR text should capture the language regarding certifications and recertifications that is stated in the SBA rules at 13 CFR 121.1004(a)(2)(ii).

Response: The final rule text has been revised to adopt this recommendation at FAR 19.302(d)(1)(ii)(C).

Comment: The respondent recommended revising the proposed rule FAR text at 19.302(d)(1) to remove the word "special" and the reference to FAR 15.503(a)(2) because 13 CFR 121.1004(a)(2) does not mention either. The respondent stated that this may confuse rather than clarify the timeliness rules for small businesses. The respondent provided an example of an instance when a contracting officer could provide notice of the identity of the apparently successful offeror, but the notice may not meet the requirements of FAR 15.503(a)(2), which could lead to confusion as to whether the five-day clock began.

Response: The special notification at FAR 19.302(d)(1) aligns with FAR 15.503(a)(2), which requires the contracting officer to provide preaward notices to offerors for small business set-asides made pursuant to FAR subpart 19.5, or the procedures in sections 19.1305, 19.1307, 19.1405, or 19.1505. This notification is referred to as a "special notification"; therefore, it is not necessary to modify the text to align with SBA's regulations. The rule did not amend this text or the reference, rather the rule merely moved the reference to immediately follow "special notification from the contracting officer" for clarity. While 13 CFR 121.1004(a)(2) does not use the term "special" or reference FAR 15.503(a)(2), the FAR provides guidance to contracting officers using terminology specific to Federal procurement.

Comment: The respondent stated it is unclear if the text at 19.302(d)(5) refers to protests challenging a firm's size at the time the firm submitted its application for a Schedule contract, or if the text is meant to challenge a firm's size at the time the firm submitted its application for set-aside orders under Multiple Award Schedule contracts. The respondent suggests revising the FAR text at 19.302(d)(5) to add the following language: "A protest under a Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals." (emphasis added).

Response: The suggested revision to add "at any time" is in the existing FAR text at 19.302(d)(5).

Comment: The respondent recommended revising the FAR text at 19.306, 19.307, and 19.308 to implement SBA regulations at 13 CFR 126.801(d), 13 CFR 134.1004(a), and 13 CFR 127.603(c), respectively, to specify when protests are due for orders placed under multiple-award contracts where the contracting officer requested

rerepresentation. The respondent believes the proposed changes will provide significant clarity to the acquisition community, including small businesses.

Response: The final rule implements SBA's regulations 13 CFR 126.801(d), 13 CFR 134.1004(a), and 127.603(c) at FAR 19.306(e)(1)(ii)(A), 19.307(e)(1)(ii)(A), and 19.308(e)(1)(ii)(A), respectively.

Comment: The respondent recommended revising the proposed rule FAR text at 19.306, 19.307, and 19.308 to make clear that for negotiated procurements, the fifth business day deadline applies to contracts that are set aside for HUBZone, small business firms, Service-Disabled Veteran-Owned Small Business (SDVOSB) firms, Women-Owned Small Business (WOSB) firms, and Economically-Disadvantaged Women-Owned Small Business (EDWOSB) firms, not only for set-aside orders placed under multiple-award contracts, in accordance with 13 CFR 121.1004(a)(2). The respondent states that the FAR text should use similar language and make clear that the five-business day deadline applies to HUBZone, SDVOSB, WOSB, and EDWOSB set-aside contracts.

Response: FAR 19.306, 19.307, and 19.308 address the procedures for protesting a firm's status as a HUBZone small business concern, an SDVOSB concern, an EDWOSB concern or a WOSB concern, respectively. The final rule FAR text at 19.306(e)(1)(ii), 19.307(e)(1)(ii), and 19.308(e)(1)(ii) specifies, for negotiated acquisitions, that an interested party shall submit its written protest to the contracting officer by the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

Comment: The respondent recommended changing the term "rerepresentation" in the FAR text at 19.306(e)(1)(ii)(A), 19.307(e)(1)(ii)(A), and 19.308(e)(1)(ii)(A) to "recertification" to ensure consistency and to avoid confusion. The respondent indicated that the SBA regulations refer to recertification, as opposed to rerepresentation, and that the SBA has developed case law regarding what constitutes a request for recertification.

Response: The FAR does not automatically replicate terminology used in SBA's regulations. In this case, the FAR has long used the terms "representation" and "rerepresentation" in lieu of the terms "certification" and "recertification" to describe how an entity addresses its size status. This difference is consistent with a longstanding policy, set forth at 41 U.S.C. 1304(b) and FAR 1.107, to limit

the use of certification requirements in the FAR.

Comment: The respondent recommended deleting the FAR text at 19.306(e)(1)(iii), FAR 19.307(e)(1)(iii), and FAR 19.308(e)(1)(iii) and adding a new subsection (e)(3) to each for clarity and accuracy.

Response: The final rule FAR text at 19.306(e)(1)(iii), FAR 19.307(e)(1)(v), and FAR 19.308(e)(1)(iii) align with the opening paragraph at 19.306(e)(1) and that of the text at FAR 19.302(d)(1)(iii). Therefore, it is not necessary to add a new subsection (e)(3).

Comment: The respondent recommended revising the proposed rule FAR text at 19.306, 19.307, and 19.308 to implement SBA's regulations at 13 CFR 126.801(d), 13 CFR 134.1004(a), and 13 CFR 127.603(c), respectively, to specify when protests are due for orders that are set aside for HUBZone, SDVOSB, WOSB, and EDWOSB firms under a multiple-award contract that is not itself partially or totally set-aside or reserved for the particular concern. This does not apply to orders and blanket purchase agreements placed under Federal Supply Schedule contracts.

Response: The final rule FAR text at 19.306 (e)(1)(ii), 19.307(e)(1)(v), and 19.308(e)(1)(ii) implements SBA's regulations 13 CFR 126.801(d), 13 CFR 134.1004(a), and 13 CFR 127.603(c), respectively.

C. Other Changes

The final rule FAR text at 19.306(e)(1)(ii), 19.307(e)(1)(ii), and 19.308(e)(1)(ii) has been revised to conform with the FAR text at 19.302(d)(1)(ii) regarding the receipt of the special notification from the contracting officer for negotiated acquisitions. In addition, the final rule FAR text at 19.302(d)(1)(ii)(A), (B), and (C), 19.306(e)(1)(ii)(A) and (B), 19.307(e)(1)(ii)(A) and (B), and 19.308(e)(1)(ii)(A) and (B) is revised to remove "indefinite-delivery indefinite-quantity (IDIQ)" and "IDIQ" as it is unnecessary to specify either since the definition of multiple-award contract at FAR 2.101 includes IDIQ contracts.

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

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses.

IV. Expected Impact of the Rule

This rule is expected to impact the Government, offerors, and contractors.

This final rule provides processes and procedures for filing size and socioeconomic status protests associated with multiple-award contracts that are partially set-aside for small businesses or that include reserves for small businesses and orders placed under multiple-award contracts, with the exception of orders and blanket purchase agreements placed under Federal Supply Schedule contracts in accordance with FAR 8.405. Prior to this rule, the FAR did not specify unique procedures for protests associated with these types of contract actions.

By clarifying the protest processes and procedures, this rule is expected to help contracting officers and interested parties understand the requirements for filing size and socioeconomic status protests for certain multiple-award contracts and orders placed under multiple-award contracts. Therefore, any impact is expected to be beneficial to the Government, contractors, and offerors.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the 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. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rules published on October 2, 2013 (78 FR 61113), October 16, 2020, (85 FR 66146), and on November 29, 2022 (87 FR 73400). This rule provides processes and procedures associated with size and socioeconomic protests related to partial set-asides and reserves of multiple-award contracts, and protests related to orders placed against multiple-award contracts, with the exception of blanket purchase agreements and orders placed under Federal Supply Schedule contracts.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This final rule will impact small businesses who are or may become multiple-award contract holders and who may be awarded orders under multiple-award contracts. According to data from the Federal Procurement Data System, in the last three fiscal years (FYs), agencies set aside orders for small businesses under unrestricted multiple-award contracts as follows: 8,336 in FY 2021; 7,463 in FY 2022; and 7,271 in FY 2023; for an average of 7,690 per fiscal year. In the last three fiscal years, agencies also further set aside orders under set-aside multiple-award contracts as follows: 10,641 in FY 2021; 11,635 in FY 2022; and 15,260 in FY 2023; for an average of 12,512 per fiscal year. In addition, in the last three fiscal years, agencies further set-aside orders for small businesses under a socioeconomic category under the set-aside portion of a multiple-award contract, where the socioeconomic category differs from the underlying multiple-award contract, as follows: 2,060 in FY 2021; 1,977 in FY 2022; and 2,213 in FY 2023; for an approximate average of 2,083 per fiscal year. In the last three fiscal years contracting officers required rerepresentation for orders as follows: 453 in FY 2021; 975 in FY 2022; and 938 in FY 2023, which averages out to approximately 789 per fiscal year.

Although we can estimate the number of set-aside orders that may be affected by this rule, it is not possible to estimate the number of protests; therefore, it is not possible to estimate the number of small entities that may be affected by this rule.

This rule clarifies the requirements for filing size and socioeconomic status protests for orders placed under multiple-award contracts resulting in reduced ambiguities of the process and increased efficiencies for small entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known significant alternative approaches that would accomplish the stated objectives.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

This 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. 3501–3521).

List of Subjects in 48 CFR Part 19

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 amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for part 19 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.

■ 2. Amend section 19.302 by—

- a. Removing from the end of paragraph (a)(2) the text “or the SBA.” and adding the text “or SBA. See 13 CFR 121.1001(a).” in its place; and
■ b. Revising paragraph (d).

The revision reads as follows:

19.302 Protesting a small business representation or rerepresentation.

* * * * *

(d) In order to affect a specific solicitation, a protest must be timely. SBA’s regulations on timeliness are contained in 13 CFR 121.1004. SBA’s regulations on timeliness related to protests of disadvantaged status are contained in 13 CFR part 124, subpart B.

(1) To be timely, a protest by any concern or other interested party must be received by the contracting officer by the close of business of the fifth business day after—

- (i) Bid opening for sealed bid acquisitions; or
(ii) Receipt of the special notification from the contracting officer (see 15.503(a)(2)) that identifies the apparently successful offeror for negotiated acquisitions, including—
(A) Partial set-asides and reserves of multiple-award contracts;

(B) Orders that are set-aside under an unrestricted multiple-award contract (except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and paragraph (d)(5) of this section)); and

(C) Orders placed under multiple-award contracts where the contracting

officer requested rerepresentation for the order; or

(iii) Receipt of notification using other communication means when written notification is not required.

(2) A protest may be made orally if it is confirmed in writing and received by the contracting officer within the 5-day period or by letter postmarked no later than 1 business day after the oral protest.

(3) A protest may be made in writing if it is delivered to the contracting officer by hand, mail, facsimile, email, express or overnight delivery service.

(4) Except as provided in paragraph (d)(6) of this section, a protest filed by the contracting officer or SBA is always considered timely whether filed before or after award.

(5) A protest under a Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals.

(6) A protest filed before bid opening, or notification to offerors of the selection of the apparent successful offeror, will be dismissed as premature by SBA.

* * * * *

■ 3. Amend section 19.306 by—

- a. Removing from the end of paragraph (e)(1)(i)(B) the word “or”; and
■ b. Revising paragraph (e)(1)(ii) and adding paragraph (e)(1)(iii).

The revision and addition read as follows:

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

* * * * *

(e) * * *

(1) * * *

(ii) For negotiated acquisitions, by the close of business on the fifth business day after receipt of the special notification from the contracting officer (see 15.503(a)(2)) of the apparently successful offeror, including—

(A) Orders placed under multiple-award contracts where the contracting officer requested rerepresentation for the order (see 13 CFR 126.801(d)(1)); and

(B) Orders set aside for HUBZone small businesses under multiple-award contracts that are not partially or totally set-aside or reserved for HUBZone small business concerns (see 13 CFR 126.801(d)(1)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and 19.302(d)(5)); or

(iii) By the close of business on the fifth business day after receipt of notification using other communication

means when written notification is not required.

* * * * *

■ 4. Amend section 19.307 by revising paragraph (e)(1) to read as follows:

19.307 Protesting a firm’s status as a service-disabled veteran-owned small business concern.

* * * * *

(e) Protest by an interested party. (1) An interested party (except contracting officers should see paragraph (f)(1) of this section) shall submit its protest to the contracting officer—

(i) To be received by close of business on the fifth business day after bid opening for sealed bid acquisitions;

(ii) To be received by close of business on the fifth business day after receipt of the special notification from the contracting officer (see 15.503(a)(2)) that identifies the apparently successful offeror for negotiated acquisitions, including—

(A) Orders placed under multiple-award contracts where the contracting officer requested rerepresentation for the order (see 13 CFR 134.1004(a)(3)(ii)); and

(B) Orders set aside for service-disabled veteran-owned small businesses under multiple-award contracts that are not partially or totally set aside or reserved for service-disabled veteran-owned small business concerns (see 13 CFR 134.1004(a)(3)(i)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and 19.302(d)(5));

(iii) To be received by close of business on the fifth business day after notification by the contracting officer of the intended awardee for an order that is set aside for SDVOSBs under a multiple-award contract that was not totally or partially set aside or reserved for SDVOSB concerns. This paragraph (e)(1)(iii) does not apply to an order issued under a Federal Supply Schedule (FSS) contract;

(iv) To be received by the close of the fifth business day after notification by the contracting officer of the intended awardee for a blanket purchase agreement that is set aside for SDVOSBs under a multiple-award contract that was not totally or partially set aside or reserved for SDVOSB concerns. This paragraph (e)(1)(iv) does not apply to a blanket purchase agreement issued under a FSS contract; or

(v) To be received by the close of business on the fifth business day after receipt of notification using other communication means when written notification is not required.

* * * * *

■ 5. Amend section 19.308 by revising paragraph (e)(1) to read as follows:

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.

* * * * *

(e) *Protest by an interested party.*(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening for sealed bid acquisitions;

(ii) To be received by the close of business by the fifth business day after receipt of the special notification from the contracting officer (see 15.503(a)(2)) that identifies the apparently successful offeror for negotiated acquisitions including—

(A) Orders placed under multiple-award contracts where the contracting officer requested rerepresentation for the order (see 13 CFR 127.603(c)(1)); and

(B) Orders set aside for EDWOSB or WOSB concerns under multiple-award contracts that are not partially or totally set aside or reserved for EDWOSB or WOSB concerns (see 13 CFR

127.603(c)(1)), except for orders and blanket purchase agreements placed under a Federal Supply Schedule contract (see 8.405 and 19.302(d)(5)); or

(iii) To be received by the close of business on the fifth business day after receipt of notification using other communication means when written notification is not required.

* * * * *

[FR Doc. 2024-16282 Filed 7-29-24; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 50

[FAC 2024-06; FAR Case 2023-007, Item III; Docket No. FAR-2023-0007, Sequence No. 1]

RIN 9000-AO55

Federal Acquisition Regulation: Limitation of Authority Regarding Extraordinary Contractual Actions

AGENCY: 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 implement a section of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, to increase the approval threshold for Congressional committee notification.

DATES: Effective August 29, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Malissa Jones, Procurement Analyst, at 571-882-4687 or by email at malissa.jones@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2024-06, FAR Case 2023-007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to implement section 822(a)(3) of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023, which increased the Congressional committee notification threshold under Public Law 85-804 (41 U.S.C. 1431) to \$150 million.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not have a significant effect or impose any new requirements on contractors or offerors. The rule simply amends FAR 50.102-3(b)(4) to increase the Congressional committee notification threshold to \$150 million. This change will reflect the new threshold in 50 U.S.C. 1431.

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 rule amends FAR 50.102-3(b)(4) to increase the Congressional committee notification threshold to \$150 million

reflecting the new threshold in 50 U.S.C. 1431. This rule does not impose any new requirements on contracts at or below the SAT, or to acquisitions for commercial products and commercial services, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess 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.

V. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the standards under 5 U.S.C 804(2).

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The 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. 3501-3521).

List of Subjects in 48 CFR Part 50

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 amend 48 CFR part 50 as set forth below: