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**FOR FURTHER INFORMATION CONTACT:** Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR case 2008-023 in all correspondence.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The United States Government Accountability Office's (GAO) decision in the matter of MCS Portable Restroom Service, B-299291, March 28, 2007, deals in part with the issue of when a sole source SDVOSB acquisition may be conducted. In this decision, GAO notes that the plain wording of FAR 19.1406 may be unintentionally inconsistent with the Veterans Benefit Act of 2003 and the Small Business Administration regulations that implement that Act. GAO concludes the intent of the FAR language is that one criterion for a sole source award is that the contracting officer does not have a reasonable expectation that two or more SDVOSBs will submit offers. The intent of the FAR language is not that a sole source acquisition is prohibited if more than one SDVOSB that could conceivably perform the work exists.

The Councils have reviewed the language in question, FAR 19.1406(a)(1). The Councils have determined that in order to lessen the possibility of misinterpretation, the language should be revised to more closely mirror the Veterans Benefit Act of 2003 (15 U.S.C. 657f). The proposed rule contains language that was revised accordingly.

The language in FAR 19.1306(a)(1), which deals with sole source awards to HUBZone small business concerns based on 15 U.S.C. 657a(b), is currently the same as the language in FAR 19.1406(a)(1). The Councils have determined that the language in 19.1306(a)(1) should be revised in the same manner as the language in 19.1406(a)(1). The intent in both cases is that one of the criterion for making a sole source award is that the contracting officer does not reasonably expect to receive offers from two or more concerns. Not revising the language in FAR 19.1306(a)(1) to match FAR 19.1406(a)(1) will lead to confusion. There could be a presumption that the intent is to convey different meanings, when that is not the intent. Therefore, the proposed rule contains language that has been revised accordingly.

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

##### B. Regulatory Flexibility Act

The Councils do not expect this proposed 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 is being done to clarify the intent of the existing language and is not a change in policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2008-023), in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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.*

##### List of Subjects in 48 CFR Part 19.

Government procurement.

Dated: May 12, 2009.

Al Matera,

Director, Office of Acquisition Policy.

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

#### PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 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).

2. Amend section 19.1306 by revising paragraphs (a) and (a)(1) to read as follows:

##### 19.1306 HUBZone sole source awards.

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (see 19.501(c) and 6.302-5) without considering small business set-asides (see Subpart 19.5), provided—

(1) The contracting officer does not have a reasonable expectation that offers

would be received from two or more HUBZone small business concerns;

\* \* \* \* \*

3. Amend section 19.1406 by revising paragraphs (a)(1) and (a)(2) to read as follows:

##### 19.1406 Sole source awards to service-disabled veteran owned small business concerns.

(a) \* \* \*

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more service-disabled veteran-owned small business concerns;

(2) The anticipated award price of the contract, including options, will not exceed—

\* \* \* \* \*

[FR Doc. E9-11648 Filed 5-18-09; 8:45 am]

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#### GENERAL SERVICES ADMINISTRATION

##### 48 CFR Parts 541 and 552

[GSAR Case 2008-G511; Docket 2009-0008; Sequence 1]

RIN 3090-A185

##### General Services Administration Acquisition Regulation; GSAR Case 2008-G511; Rewrite of Part 541, Acquisition of Utility Services

**AGENCY:** Office of the Chief Acquisition Officer, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise the section of GSAR Part 541 that provides requirements for the acquisition of utility services.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before July 20, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR Case 2008-G511 by any of the following methods:

• *Regulations.gov*: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "GSAR Case 2008-G511" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with GSAR Case 2008-G511. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your

name, company name (if any), and "GSAR Case 2008–G511" on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite GSAR Case 2008–G511 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 Ms. Lori Sakalos at (202) 208–0498. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G511.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The GSA is amending the GSA Acquisition Regulation (GSAR) to update the text addressing GSAR Part 541, Acquisition of Utility Services, and Subpart 541.XX, Solicitation Provision and Contract Clauses. This rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the GSAR portion of Part 541. Subpart 541.XX is identified as "shaded" for regulatory coverage. Currently, there are no GSA-unique clauses in Part 541. However, Subpart 541.XX, Solicitation Provisions and Contract Clauses, is added to prescribe two GSA-unique clauses. These clauses are outlined in section 541.501, Solicitation Provisions and Contract Clauses, and shall be inserted by contracting officers in all utility contracts and solicitations. The first clause, GSAR 552.241–XX, Availability of Funds for the Next Fiscal Year or

Quarter, is added as regulatory text for inclusion in all GSA utility solicitations and contracts instead of FAR 52.232–19. The second clause, 552.241–YY/552.233–71, Disputes (Utility Contracts), was relocated from GSAM Part 533 and added to this subpart to specifically align with utility acquisitions.

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking published in the **Federal Register** at 71 FR 7910 on February 15, 2006.

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

##### **B. Regulatory Flexibility Act**

The General Services Administration does not expect this proposed 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 the revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The GSA will consider comments from small entities concerning the affected GSAR Parts 541 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008–G511), in correspondence.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM 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.*

##### **List of Subjects in 48 CFR Parts 541 and 552**

Government procurement.

Dated: May 5, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, GSA proposes to amend 48 CFR Chapter 5 as set forth below:

1. Add Part 541 to read as follows:

##### **PART 541—ACQUISITION OF UTILITY SERVICES**

##### **Subpart 541.XX—Solicitation Provision and Contract Clauses**

Sec.

541.501 Solicitation provision and contract clauses.

2. The authority citation for 48 CFR part 541 reads as follows:

**Authority:** 40 U.S.C. 121(c).

##### **541.501 Solicitation provision and contract clauses.**

In addition to the solicitation terms, provisions and contract clauses at FAR 41.501(c), the contracting officer shall include the following clauses—

(a) 552.241–XX, *Availability of Funds for the Next Fiscal Year or Quarter*. As prescribed in 541.501, insert the clause 552.241–XX, Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232–19, in all utility acquisitions.

(b) 552.241–YY, *Disputes (Utility Contracts)*. As prescribed in 541.501, insert clause 552.241–YY, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

##### **PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. The authority citation for 48 CFR part 552 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

4. Add sections 552.241–XX and 552.241–YY to read as follows:

##### **552.241–XX Availability of Funds for the Next Fiscal Year or Quarter.**

As prescribed in 541.501, insert the clause 541.241–XX, Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232–19, in all utility acquisitions.

##### **AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR OR QUARTER (DATE)**

Funds are not presently available for performance under this contract beyond \_\_\_\_\_. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond \_\_\_\_\_, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.  
(End of clause)

##### **552.241–YY Disputes (Utility Contracts).**

As prescribed in 541.501, insert clause 552.241–YY, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

DISPUTES (UTILITY CONTRACTS)  
(DATE)

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

[FWS-R3-ES-2008-0030; 92210-1111-0000-FY09-B3]

### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Coaster Brook Trout as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the coaster brook trout (*Salvelinus fontinalis*) as endangered under the Endangered Species Act of 1973, as amended (Act). The petition also asked that critical habitat be designated for the species. After review of all available scientific and commercial information, we find that the coaster brook trout is not a listable entity under the Act, and therefore, listing is not warranted. We ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of coaster brook trout and to support cooperative conservation of coaster brook trout within its historical range in the Great Lakes.

**DATES:** The finding announced in this document was made on May 19, 2009.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number [FWS-R3-ES-2008-0030]. Supporting documentation for this finding is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Region 3 Fish and Wildlife Service Regional Office, 1 Federal Drive, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111. Please submit any new information,

materials, comments, or questions concerning this finding to the above address, Attention: Coaster brook trout.

**FOR FURTHER INFORMATION CONTACT:** Jessica Hogrefe, Region 3 Fish and Wildlife Service Regional Office (*see ADDRESSES*) (telephone 612-713-5346; facsimile 612-713-5292). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

## SUPPLEMENTARY INFORMATION:

## Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that we make a subsequent finding within 12 months. Such 12-month findings must be published in the **Federal Register**. This notice constitutes our 12-month finding for the petition to list the U.S. population of coaster brook trout.

## Previous Federal Action

The Sierra Club Mackinac Chapter, Huron Mountain Club, and Marvin J. Roberson filed a petition, dated February 22, 2006, with the Secretary of the Interior to list as endangered the “naturally spawning anadromous (lake-run) coaster brook trout throughout its known historic range in the conterminous United States” and to designate critical habitat under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). On behalf of the petitioners, Peter Kryn Dykema, Secretary of the Huron Mountain Club, submitted supplemental information, dated May 23, 2006, in support of the original petition. This supplemental information

provided further information on the species’ status and biology, particularly for brook trout in the Salmon Trout River.

On September 13, 2007, we received a 60-day notice of intent to sue over the Service’s failure to determine, within 1 year of receiving the petition, whether the coaster brook trout warrants listing. Under section 4 of the Act, the Service is to make a finding, to the maximum extent practicable within 90 days of receiving a petition, that it does or does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Further, the Act requires that, within 12 months of receiving a petition found to present substantial information, the Service must determine whether the petitioned action is warranted. A complaint was filed in U.S. District Court in the District of Columbia on December 17, 2007, for failure to make a timely finding (*Sierra Club, et al. v. Kempthorne*, No. 1:07-cv-02261 (D.D.C. December 17, 2007)). The Service reached a negotiated settlement with the plaintiffs to submit the 90-day finding to the **Federal Register** by March 15, 2008. We published a “substantial” 90-day finding March 20, 2008. The negotiated settlement further required the Service to publish the 12-month finding in the **Federal Register** by December 15, 2008. The deadline for the 12-month finding was extended to April 15, 2009, by mutual consent. On April 15, 2009, we filed an unopposed motion to extend the deadline for the coaster brook trout 12-month finding to May 12, 2009.

## Species Information

## Species Description

Brook trout (*Salvelinus fontinalis*), also called brook char or speckled trout, is one of three species in the genus *Salvelinus* (chars) native to north and eastern North America; the others being lake trout (*S. namaycush*) and Arctic char (*S. alpinus*). The chars are a subgroup of fishes in the salmon and trout subfamily (Salmoninae) that is distinct from the “true” trout and salmon subgroups.

The brook trout throughout its range in eastern North America exhibits considerable variation in growth rate, color, and other features, but generally can be distinguished from other char and trout species by its olive-green to dark brown back with a light yellow-brown vermiculate pattern, sides with large yellow-brown spots and blue halos surrounding small, sporadic red and orange spots. Pectoral, pelvic, anal, and lower caudal fin have leading edges of white bordered by black with the