

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-16 are effective March 27, 2000. For Item II, the rule is mandatory for solicitations issued on or after May 26, 2000, but contracting officers may, at their discretion, include the clauses and provisions in solicitations issued before May 26, 2000. For Item I, the rule is applicable to solicitations issued on or after the rule's effective date.

Dated: March 15, 2000.

R.D. Kerrins, Jr.,

Acting Director, Defense Procurement.

Dated: March 20, 2000.

Sue McIver,

*Acting Deputy Associate Administrator,
Office of Acquisition Policy, General Services
Administration.*

Dated: March 16, 2000.

Tom Luedtke,

*Associate Administrator for Procurement,
National Aeronautics and Space
Administration.*

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97-16; FAR Case 1999-012; Item I]

RIN 9000-AI64

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) final policy directive to provide updated guidance on the Small Business Competitiveness Demonstration Program.

DATES: *Effective Date:* March 27, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to

solicitations issued on or after March 27, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 26, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999-012@gsa.gov. Please submit comments only and cite FAC 97-16, FAR case 1999-012 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-16, FAR case 1999-012.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR Subpart 19.10 to provide updated guidance regarding the Small Business Competitiveness Demonstration Program (Program). The Program was originally established in 1988 by Title VII of Public Law 100-656, as amended, and subsequently implemented in the FAR. As statutory amendments were made to the Program, OFPP issued conforming modifications to its policy directive. With the enactment of Public Law 105-135, the Small Business Reauthorization Act of 1997, the Program was made permanent. The OFPP and SBA published a joint final policy directive on the Program in the **Federal Register** at 64 FR 29693, June 2, 1999. Specific guidance published in the OFPP and SBA final policy directive requires that DoD, GSA, and NASA revise the FAR to provide this updated guidance.

This rule was not subject to Office of Management and Budget 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

This interim rule is not expected 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 rule merely makes ministerial changes to the existing

language and does not change existing policy. Therefore, the Councils have not performed an Initial Regulatory Flexibility Analysis. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subpart 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 1999-012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements a joint OFPP/SBA policy directive that became effective on October 1, 1999. However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 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. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 19.502-2 in paragraph (a) by revising the last sentence; and in paragraph (d) by removing “(see 19.1006(b))” and adding “(see 19.1007(b))” in its place. The revised text reads as follows:

19.502-2 Total small business set-asides.

(a) * * * The small business reservation does not preclude the award

of a contract with a value not greater than \$100,000 under Subpart 19.8, Contracting with the Small Business Administration, under 19.1007(c), Solicitations equal to or less than the ESB reserve amount, or under 19.1305, HUBZone set-aside procedures.

* * * * *

3. Amend section 19.1001 by revising the introductory paragraph to read as follows:

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100-656 (15 U.S.C. 644 note). The program is implemented by a joint OFPP and SBA Policy Directive and Implementation Plan, dated May 25, 1999. The program consists of two major components—

* * * * *

4. Amend section 19.1002 by revising the section heading and adding, in alphabetical order, the definition “Emerging small business reserve amount” to read as follows:

19.1002 Definitions.

* * * * *

Emerging small business reserve amount, for the designated groups described in 19.1005, means a threshold established by the Office of Federal Procurement Policy of—

(1) \$25,000 for construction, refuse systems and related services, and nonnuclear ship repair; and

(2) \$50,000 for architectural and engineering services.

19.1003 [Amended]

5. Amend section 19.1003 by redesignating paragraphs (b) and (c) as (c) and (b), respectively.

6. Amend section 19.1005 by redesignating paragraphs (a)(3) and (a)(4) as (a)(4) and (a)(3), respectively, and revising newly designated (a)(4); and in paragraph (b) by removing “shall designate” and adding “designates” in its place. The revised text reads as follows:

19.1005 Applicability.

(a) * * *

(4) Architectural and engineering services (including surveying and mapping) under SIC code 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541, *et seq.* (the “Brooks A–E Act”) (see Subpart 36.6).

* * * * *

19.1006 and 19.1007 [Redesignated as 19.1007 and 19.1008, respectively] [New 19.1006 added]

7a. Redesignate sections 19.1006 and 19.1007 as 19.1007 and 19.1008, respectively; and add a new section 19.1006 to read as follows:

19.1006 Exclusions.

This subpart does not apply to—
(a) Orders placed against Federal Supply Schedules;

(b) Contract awards to educational and nonprofit organizations; or

(c) Contract awards to governmental entities.

7b. Revise the newly designated 19.1007 to read as follows:

19.1007 Procedures.

(a) *General.* (1) All solicitations must include the applicable SIC code and size standards.

(2) The face of each award made pursuant to the program must contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) *Solicitations greater than the ESB reserve amount.* (1) Solicitations for acquisitions in any of the four designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under subpart 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal.

(2) Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see subpart 19.8) and the HUBZone Program (see subpart 19.13).

(c) *Solicitations equal to or less than the ESB reserve amount.* (1) Solicitations for acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount must be set aside for ESBs, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESBs that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer must—

(i) For acquisitions \$25,000 or less, proceed in accordance with subpart 19.5, 19.8, or 19.13; or

(ii) For acquisitions greater than \$25,000 and less than or equal to the ESB reserve amount, proceed in

accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer must make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer must cancel the ESB set-aside and proceed in accordance with paragraph (c)(1)(i) or (ii) of this section.

(d) *Expanding small business participation in targeted industry categories.* Each participating agency must develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures must be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.

19.1008 [Amended]

7c. Amend the newly designated 19.1008 in paragraphs (a), (b), and (c) by removing “The contracting officer shall insert” and adding “Insert” in their place; and in paragraph (b) by removing “19.1006(c)” and adding “19.1007(c)” in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 97-16; FAR Case 1998-400 (98-400); Item II]

RIN 9000-AI27

Federal Acquisition Regulation; Progress Payments and Related Financing Policies

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule