

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 19**

[FAC 2021–07; FAR Case 2020–012; Item III; Docket No. FAR–2020–0012; Sequence No. 1]

RIN 9000–AO16

Federal Acquisition Regulation: Scope of Review by Procurement Center Representatives

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 to implement section 1811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 to provide procurement center representatives with the discretion to review any acquisition.

DATES: Effective September 10, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 703–605–2815, or by email at Malissa.jones@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2021–07, FAR Case 2020–012.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 1811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328, 15 U.S.C. 644(l)(9)(A)). Section 1811 allows procurement center representatives to review any solicitation for a contract or task order without regard as to whether the contract or order is set aside for small business concerns, or reserved in the case of a multiple-award contract, or whether or not the solicitation would result in a bundled or consolidated contract or order. The Small Business Administration (SBA) issued a final rule at 84 FR 65647, dated November 29, 2019, to implement section 1811 of the NDAA for FY 2017. In their final rule, SBA amended 13 CFR 125.2(b)(1)(i)(A) to allow procurement center

representatives to review any acquisition, regardless of whether it is set aside, partially set aside, or reserved for small business or other socioeconomic categories.

II. Discussion and Analysis

The changes to the FAR and the rationale for the changes are summarized in the following paragraphs.

A. Contracting Officer Requirements for Review of Acquisitions

Section 19.202–1, Encouraging small business participation in acquisitions, is amended to require that contracting officers provide the procurement center representative a copy of any proposed acquisition package and other reasonably obtainable information related to the acquisition, if the procurement center representative exercises their discretion to review any proposed acquisition. The specific procedures are typically articulated in agreements between procuring activities and procurement center representatives. Section 19.202–1 is also amended to clarify the acquisitions for which the contracting officer must provide the statement described in paragraph (e)(2). In addition, changes are made to paragraph (d) of section 19.501, General, to provide that SBA procurement center representatives may review any proposed acquisition in excess of the micro-purchase threshold.

B. Duties of Procurement Center Representatives

Section 19.402, Small Business Administration procurement center representatives, is amended to update the description of a procurement center representative's duties to better reflect SBA's regulation at 13 CFR 125.2(b). Specifically, changes to FAR 19.402(c) are made to provide that procurement center representatives may recommend the set-aside or sole-source award to a small business; the breakout of discrete components, items, and requirements for competition; and ways to improve competition. Paragraph (c)(7) in section 19.402 is relocated from section 19.403, Small Business Administration breakout procurement center representatives. This paragraph describes the appeal a procurement center representative may file if a contracting activity does not adopt the procurement center representative's recommendation.

C. Duties of Breakout Procurement Center Representative

The text of section 19.403, Small Business Administration breakout procurement center representatives, is

removed and marked “Reserved.” Paragraph (c)(8) in this section is relocated to section 19.402 (see section II.B. of this preamble). Breakout procurement center representatives were removed from the Small Business Act (15 U.S.C. 644) by section 1621 of the NDAA for FY 2013 (Pub. L. 112–239). Therefore, section 19.403 is no longer needed.

D. Technical Amendments

Section 19.502–8, Rejecting Small Business Administration recommendations, has a two working-day appeals period. There is a different appeals period for the HUBZone, Service-Disabled Veteran-Owned Small Business, and Women-Owned Small Business Programs, of five working days; therefore, a reference is added to FAR 19.502–8(b) for those sections.

III. 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 entitled “Publication of Proposed Regulations.” Paragraph (a)(1) of the statute 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 amends requirements related to the review of proposed acquisitions by SBA's procurement center representatives. These requirements affect only the internal operating procedures of the Government.

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

This rule amends FAR part 19, Small Business Programs. The objective of this rule is to update requirements for contracting officers with regard to reviews of proposed acquisitions by SBA's procurement center representatives, to align with section 1811 of the NDAA for FY 2017 (Pub. L. 114–328, 15 U.S.C. 644(l)(9)(A)). This rule does not change the applicability or text of any FAR solicitation provisions or contract clauses.

V. Expected Impact of the Rule

The changes in this rule will affect Government operations, but not contractor operations.

As a result of this rule, contracting officers may have to provide additional acquisition packages to procurement center representatives for review prior to issuance of the solicitation. The number of additional acquisitions to be reviewed by PCRs is unknown, as the reviews will be conducted at the discretion of the procurement center representatives.

The cost impact for the Government will depend on how many additional acquisition packages contracting officers provide to procurement center representatives for review. This rule will have no cost impact for contractors.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 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.

VII. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VIII. 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 III 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.

IX. 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 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 19.202–1 by—

■ a. In paragraph (e)(1)(ii) removing “; or” and adding “;” in its place;

■ b. In paragraph (e)(1)(iii) removing “Utilization.” and adding “Utilization; or” in its place;

■ c. Adding paragraph (e)(1)(iv); and

■ d. Revising paragraph (e)(2) introductory text.

The addition and revision read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) * * *

(iv) The acquisition will be reviewed at the PCR’s discretion.

(2) For acquisitions described in paragraph (e)(1)(i) through (iii) of this section, provide a statement explaining why the—

* * * * *

■ 3. Amend section 19.402 by—

■ a. Revising paragraph (c)(1)(i);

■ b. Removing from the end of paragraph (c)(1)(ii) “and”;

■ c. Revising paragraph (c)(1)(iii); and

■ d. Adding paragraphs (c)(1)(iv) and (c)(7).

The revisions and additions read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(1) * * *

(i) The set-aside or sole-source award to a small business of selected acquisitions;

* * * * *

(iii) Breakout of discrete components, items, and requirements for competitive acquisitions; and

(iv) Ways to improve competition.

* * * * *

(7) Appealing a contracting officer’s rejection of PCR’s recommendation. Such appeal must be in writing and shall be filed and processed in accordance with the appeal procedures set out in 19.502–8.

19.403 [Removed and Reserved]

■ 4. Remove and reserve section 19.403.

■ 5. Amend section 19.501 by revising paragraph (d) to read as follows:

19.501 General.

* * * * *

(d) At the request of an SBA PCR (or, if a PCR is not assigned, see 19.402(a)), the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative’s security clearance) any proposed acquisition in excess of the micro-purchase threshold.

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■ 6. In section 19.502–8 amend paragraph (b) by revising the first sentence to read as follows:

19.502–8 Rejecting Small Business Administration recommendations.

* * * * *

(b) The SBA PCR (or, if a PCR is not assigned, see 19.402(a)) may appeal the contracting officer’s rejection to the head of the contracting activity within 2 working days after receiving the notice (except see 19.1305(d), 19.1405(d), and 19.1505(g)). * * *

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