

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (OCT 2022)

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Alternate II (OCT 2022). * * *

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■ 16. Amend section 52.213–4 by revising the date of the clause and removing from paragraph (a)(2)(viii) the date “(JAN 2022)” and adding the date “(OCT 2022)” in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

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Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (Oct 2022)

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■ 17. Amend section 52.219–1 by revising the date of the provision and paragraph (c)(8)(i) to read as follows:

52.219–1 Small Business Program Representations.

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Small Business Program Representations (Oct 2022)

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(c) * * *

(8) * * *

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search and SAM, and will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract (see 13 CFR 126.200(e)(1)); and

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■ 18. Amend section 52.219–3 by—

- a. Revising the date of the clause;
- b. Revising paragraph (d) and (e); and
- c. Removing paragraph (f).

The revisions read as follows:

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

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Notice of HUBZone Set-Aside or Sole-Source Award (Oct 2022)

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(d) *Joint venture.* A joint venture may be considered a HUBZone concern if—

(1) At least one party to the joint venture is a HUBZone small business concern and complies with 13 CFR 126.616(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business party or parties to the joint venture must be more than administrative functions.

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■ 19. Amend section 52.219–4 by—

- a. Revising the date of the clause;
- b. Revising paragraph (c); and
- c. Removing paragraph (d).

The revisions read as follows:

52.219–4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

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Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022)

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(c) *Joint venture.* A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business parties to the joint venture must be more than administrative functions.

■ 20. Amend section 52.219–8 by—

- a. Revising the date of the clause;
- b. In paragraph (a), revising the definition “HUBZone small business concern”; and
- c. Revising paragraph (e)(5).

The revisions read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (OCT 2022)

(a) * * *

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

* * * * *

(e) * * *

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

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■ 21. Amend section 52.219–9 by revising the date of the clause and paragraph (e)(4) to read as follows:

52.219–9 Small Business Subcontracting Plan.

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Small Business Subcontracting Plan (OCT 2022)

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(e) * * *

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm.

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■ 22. Amend section 52.244–6 by—

- a. Revising the date of the clause; and
- b. Removing from paragraph (c)(1)(vii) the date “(Oct 2018)” and adding the date “(OCT 2022)” in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

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Subcontracts for Commercial Products and Commercial Services (OCT 2022)

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[FR Doc. 2022–20342 Filed 9–22–22; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 2, 19, and 52**

[FAC 2022–08; FAR Case 2020–013; Item IV; Docket No. FAR–2021–0009, Sequence No. 1]

RIN 9000–AO17

Federal Acquisition Regulation: Certification of Women-Owned Small Businesses

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 to amend the Federal Acquisition Regulation (FAR) to implement the final rule published by the Small Business Administration implementing a section of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year (FY) 2015.

DATES: Effective October 28, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 571–882–4687, 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 2022–08, FAR Case 2020–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 86 FR 55769 on October 7, 2021, to amend the FAR to implement section 825(a)(1) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291), which amended 15 U.S.C. 637(m), and the Small Business Administration (SBA) final rule at 85 FR 27650 issued on May 11, 2020, implementing section 825(a)(1). Five respondents 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 and as a result, a clarifying change has been made to 19.1505(d); however, there are no significant changes from the proposed rule. A discussion of the comments received is provided as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. Support for the Rule

Comment: One respondent expressed support for the rule.

Response: The Councils acknowledge the respondent’s support for the rule.

2. Women-Owned Small Business Certification Process

Comment: Two respondents expressed concern regarding the changes to the women-owned small business (WOSB) certification process, indicating it is overly complex and is a barrier to entry into the Federal marketplace for WOSB concerns. One respondent also indicated that the new process will extend award times by requiring contracting officers to check the Dynamic Small Business Search (DSBS) to verify the certification status of WOSB concerns.

Response: This rule implements SBA’s final rule at 85 FR 27650, issued on May 11, 2020, implementing section 825(a)(1) of the NDAA for FY 2015, which amended 15 U.S.C. 637(m). In its final rule, SBA amended 13 CFR part 127 to require WOSB and EDWOSB concerns to be certified by SBA or an SBA-approved third-party certifier in accordance with 13 CFR 127.300. The statutory language mandates the methods for certification; therefore, SBA has no authority to retain representation as an option for concerns seeking to compete for WOSB and EDWOSB sole-source and set-aside procurements. The WOSB and EDWOSB certification requirement applies only to those businesses wishing to compete for set-aside or sole-source contracts under the WOSB Program (the Program). Other WOSB concerns that do not participate in the Program may continue to represent their status and receive contract awards outside the Program. This rule does not change existing documentation requirements for certification. WOSBs will submit the documentation to SBA through certify.SBA.gov or to SBA-approved third-party certifiers. In addition, a concern’s status will appear in the System for Award Management (SAM); therefore, this rule will not delay award since contracting officers are already required to verify contractor information in SAM prior to award.

3. Clarifications

Comment: One respondent indicated that the Background section of the proposed rule incorrectly stated that WOSBs would be able to be certified by State governments and that this statement did not align with the FAR text of the proposed rule and SBA’s final rule. The respondent indicated that SBA’s final rule implementing section 825(a)(1) of the NDAA for FY 2015 does not authorize WOSB and EDWOSB concerns to be certified by a State government. The respondent indicated that the proposed rule FAR text accurately captures the program requirements as implemented by SBA.

Response: The Councils acknowledge the inaccuracy of the statement included in the background section of the proposed rule and clarify that WOSB and EDWOSB concerns are certified by SBA or a SBA-approved third-party certifier.

Comment: One respondent indicated that the proposed rule does not clearly indicate “when the EDWOSB or WOSB concern must have been designated as a certified concern or have a pending application for certification in DSBS” to be eligible for award.

Response: As a result of the comment received, the FAR text at 19.1505(d) has been revised to clarify when an offeror is eligible for consideration.

4. Outside the Scope of the Rule

Comment: One respondent indicated that the proposed rule’s language at FAR 19.1503(c) differs from SBA’s regulations regarding when a contracting officer must, or may, terminate a contract.

Response: This comment is outside the scope of the rule. SBA’s regulations at 13 CFR 137.604(f) correspond to the FAR coverage at 19.308 on protests, not 19.1503, which addresses an entity’s status as a WOSB or EDWOSB. The questioned phrase “the contracting officer may terminate” already appears at FAR 19.1503(e), and is only being renumbered as paragraph (c).

Comment: One respondent recommended that the North American Industry Classification System codes be revised to increase the dollar thresholds to allow WOSB concerns to qualify for large or high dollar value set-aside contracts.

Response: This comment is outside the scope of this rule.

Comment: Three respondents submitted comments outside the scope of the rule.

Response: These comments are outside the scope of this rule.

C. Other Changes

FAR 19.1503(b)(2), 19.1505(e), and 19.1505(f) have been changed to clarify the systems that reflect an EDWOSB and WOSB concern’s certification status. Conforming changes have been made to the definition of Economically disadvantaged women-owned small business (EDWOSB) concern in FAR clause 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services.

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 the following provisions and clauses: provision 52.212–3, clause 52.212–5, provision 52.219–1, clause 52.219–28, clause 52.219–29, clause 52.219–30. While the provisions and clauses are being amended, this rule does not change the application to contracts at or below the SAT or for commercial products or for commercial services, including COTS items. The provisions and clauses continue to apply to acquisitions for

commercial products or for commercial services, including COTS items, and acquisitions at or below the SAT.

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 has made 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 or commercial services contracts and subcontracts, the provision of law will apply to contracts and subcontracts 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 has made a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items.

C. Determinations

This rule implements section 825(a)(1) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 and SBA’s implementing regulation. Section 825 requires women-owned small business concerns and economically disadvantaged women-owned small business concerns to be certified to be eligible under the WOSB Program for set-aside or sole-source awards (see 13 CFR 127.300).

Section 825 is silent on the applicability of these requirements for acquisitions at or below the SAT and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1905 and its application to acquisitions at or below the SAT. Therefore, it does not apply to acquisitions at or below the SAT unless the FAR Council makes a written determination as provided at 41 U.S.C. 1905. Section 825(a)(1) is silent on applicability to acquisitions of commercial products and commercial services. The statute does not provide for civil or criminal penalties. Therefore, it does not apply to acquisitions of commercial products and commercial services unless the FAR Council makes a written determination as provided in 41 U.S.C. 1906. Additionally, the law is silent on the applicability of this requirement to acquisitions of COTS items and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1907 and its application to acquisitions of COTS items. Therefore, it does not apply to acquisition of COTS items unless the Administrator for Federal Procurement Policy makes a written determination as provided at 41 U.S.C. 1907.

Failure to apply section 825(a)(1) to acquisitions at or below the SAT, acquisitions of commercial products or commercial services, including COTS items, would prevent contracting officers from using WOSB set-asides or making sole-source awards to WOSB or EDWOSB concerns based on their socioeconomic status. This limitation would restrict opportunities for WOSB and EDWOSB concerns in the Federal marketplace which is contrary to the longstanding policy expressed in FAR 19.201 of promoting “maximum practicable opportunities” in Government contracting, as well as the Administration’s express commitment reflected in Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through*

the Federal Government, to advance equity for underserved communities.

Application of the law to acquisitions at or below the SAT and acquisitions of commercial products and commercial services, including COTS items, will maximize the positive impact set-aside and sole-source contracts provide for WOSB and EDWOSB concerns by increasing WOSB opportunities in the Federal marketplace.

The Federal Government has a policy of promoting WOSB and EDWOSB participation in Government contracting; therefore, applying the requirement to acquisitions at or below the SAT and acquisitions of commercial products and commercial services, including COTS items, will help Federal agencies achieve WOSB goals.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of this rule to acquisitions at or below the SAT and to acquisitions of commercial products and commercial services and COTS items.

IV. Expected Impact of the Rule

As a result of this rule, contracting officers will be required to check SAM to determine if an EDWOSB or WOSB concern is certified or if the concern has a pending application for certification in DSBS, instead of checking that all required documentation has been submitted to the now defunct WOSB Repository. For EDWOSB or WOSB set-asides and sole-source awards, awards can only be made to an EDWOSB or WOSB certified concern. For EDWOSB or WOSB set-aside awards, if the apparently successful offeror’s EDWOSB or WOSB certification is pending, the contracting officer will be required to notify SBA’s Director/Government Contracting, and request SBA’s status determination. Within 15 calendar days from the date of contracting officer notification, SBA will make a determination regarding the offeror’s status as an EDWOSB or WOSB eligible under the WOSB program. If SBA does not provide the contracting officer with a determination within 15 days, the contracting officer may provide SBA additional time to make a determination, or may proceed with award to the next highest evaluated offeror.

The changes in this rule will affect contractor operations by requiring WOSB and EDWOSB concerns to be certified by SBA or a SBA-approved third-party certifier. However, the requirement to submit documentation (*i.e.*, articles of incorporation, bylaws, stock ledgers or certificates, tax records, etc.) to SBA through *certify.SBA.gov* or

to SBA approved third-party certifiers already exists and remains unchanged.

The public cost associated with obtaining the WOSB or EDWOSB certification from SBA or a third-party certifier is accounted for under the SBA final rule implementing the Program certification requirements (85 FR 27650). In addition, the SBA final rule advises concerns that only a certified WOSB or EDWOSB may seek a specific sole-source requirement under the Program and that only a certified WOSB or EDWOSB, or a concern that has a pending application for certification under the Program may submit an offer on a specific EDWOSB or WOSB set-aside requirement.

Given SBA's notice to small business concerns, the cost to the public associated with this rule is not a significant impact, and is limited to the cost of regulatory familiarization, or the cost associated with reading this rule and understanding the revised solicitation provision.

V. 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.

VI. 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.

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 amending the Federal Acquisition Regulation (FAR) to implement section 825(a)(1) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291) which amended 15 U.S.C. 637(m), and SBA's final rule at 85 FR 27650 issued on May 11, 2020, to require that women-owned small business (WOSBs) concerns and economically disadvantaged women-owned small business (EDWOSBs) concerns participating in the WOSB Program (the Program) be certified by SBA or by a SBA-approved third-party certifier. EDWOSB and WOSB concerns that are not certified will not be eligible for contracts under the Program. The certification requirement applies only to participants wishing to compete for set-aside or sole-source contracts under the Program. EDWOSB and WOSB concerns that do not participate in the Program may continue to represent their status, receive contract awards outside the Program, and the awards may count toward an agency's goal for awards to WOSBs.

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

This rule will require EDWOSB and WOSB concerns to apply for certification through SBA or a SBA-approved third-party certifier and to be certified in order to be eligible for WOSB or EDWOSB set-aside or sole-source contracts under the Program. This rule is anticipated to impact 9,000–12,000 WOSB concerns. This estimate reflects the approximate number of WOSB concerns in the predecessor system SBA used to maintain WOSB certifications. The assumption is that the majority of those entities will seek certification from SBA or a third-party under the new certification process.

Data taken from the Federal Procurement Data System as of February 8, 2022, revealed that 8,599 set-aside or sole-source awards were made to WOSB and EDWOSB concerns from FY 2019 to FY 2021. Of the 8,599 awards made, 625 or approximately 7 percent, were WOSB and EDWOSB sole-source awards. This exemplifies the number of opportunities an offeror would potentially miss out on if they are not a certified EDWOSB or WOSB concern.

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

The Small Business Administration currently collects information to carry out its statutory mandate to provide oversight of certification related to SBA's WOSB Federal Contract Program (OMB Control Number 3245–0374, Certification for the Women-Owned Small Business Federal Contract Program). Certified EDWOSB or WOSB concerns need to update their certification information with SBA once a year to maintain their status with the WOSB Federal Contract program.

There are no known significant alternative approaches to the final rule.

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 Parts 2, 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 amend 48 CFR parts 2, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, and 52 continues to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. In section 2.101, in paragraph (b)(2), amend the definition of “Women-Owned Small Business (WOSB) Program” by:

■ a. In paragraph (1) introductory text, removing the phrase “sole source” and adding the phrase “sole-source” in its place;

■ b. In paragraph (2), removing the phrase “13 CFR part 127” and adding the phrase “13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300” in its place; and

■ c. In paragraph (3), removing the phrase “(13 CFR part 127)” and adding the phrase “, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300” in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.308 by:

■ a. Removing from paragraph (d)(1)(ii) the phrase “women, when” and adding the phrase “women who are United States citizens, when” in its place;

■ b. Removing paragraph (d)(2);

■ c. Redesignating paragraph (d)(3) as (d)(2);

■ d. Removing from the newly designated paragraph (d)(2) the words

“not a” and adding the words “not an” in its place;

■ e. Revising paragraph (f)(1);

■ f. Revising paragraphs (i)(3)(iii) and (i)(5)(iii);

■ g. Removing from paragraph (l)(2) the phrase “409 Third Street SW, Washington, DC 20416, facsimile 202–205–6390” and adding the phrase “by email at *wosbprotest@sba.gov*” in its place; and

■ h. Removing from paragraph (l)(4) the phrase “facsimile 202–205–6873.”

The revisions 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.

* * * * *

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA’s Director for Government Contracting by email at *wosbprotest@sba.gov*.

* * * * *

(i) * * *

(3) * * *

(iii) SBA will remove the concern’s designation in the Dynamic Small Business Search (DSBS) as an EDWOSB or WOSB concern eligible under the WOSB Program. The concern shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

* * * * *

(5) * * *

(iii) SBA will remove the concern’s designation in DSBS as an EDWOSB or WOSB concern eligible under the WOSB Program. The concern shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

* * * * *

19.502–8 [Amended]

■ 4. Amend section 19.502–8 in paragraph (b) by removing “19.1505(g)” and adding “19.1505(i)” in its place.

■ 5. Amend section 19.1500 by revising paragraph (c) to read as follows:

19.1500 General.

* * * * *

(c) An economically disadvantaged women-owned small business (EDWOSB) concern and a WOSB concern eligible under the WOSB Program are subcategories of “women-owned small business concern” as defined in section 2.101.

19.1501 [Removed and Reserved]

■ 6. Remove and reserve section 19.1501.

■ 7. Revise section 19.1503 to read as follows:

19.1503 Status.

(a) Status as an EDWOSB concern or WOSB concern eligible under the WOSB Program is determined by the Small Business Administration in accordance with 13 CFR part 127.

(b) For a WOSB that seeks a WOSB or EDWOSB set-aside or sole-source contract, the contracting officer shall verify that the offeror—

(1) Is registered in the System for Award Management (SAM); and

(2) Is designated as a certified EDWOSB or WOSB concern in SAM (see 19.1505(d) for set aside procedures). Pending applications for certification are only in the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm.

(c) If there is a decision issued by SBA as a result of a current eligibility examination finding that the concern did not qualify as an EDWOSB concern or WOSB concern eligible under the WOSB Program, the contracting officer may terminate the contract, and shall not exercise any option, or award further task or delivery orders. Agencies shall not count or include the award toward the small business goals for an EDWOSB concern or WOSB concern eligible under the WOSB Program and must update FPDS from the date of award to reflect the final SBA decision.

(d) A joint venture may be considered an EDWOSB concern or WOSB concern eligible under the WOSB Program if the EDWOSB or WOSB participant is certified in SAM (see section 19.1505(d) for set-aside procedures) and the joint venture meets the requirements of 13 CFR 127.506.

■ 8. Amend section 19.1504 by revising paragraph (b) to read as follows:

19.1504 Exclusions.

* * * * *

(b) Requirements that can be satisfied through award to mandatory Government sources (see section 8.002);

* * * * *

■ 9. Amend section 19.1505 by:

■ a. Revising paragraph (a)(2);

■ b. Redesignating paragraphs (f) and (g) as paragraphs (h) and (i);

■ c. Redesignating paragraph (d) as paragraph (g);

■ d. Removing paragraph (e);

■ e. Adding new paragraphs (d) through (f); and

■ f. Revising newly redesignated paragraphs (i) introductory text and (i)(1).

The revisions and addition read as follows:

19.1505 Set-aside procedures.

(a) * * *

(2)(i) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns when the acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement; or

(ii) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to WOSB concerns eligible under the WOSB Program when the acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement, as specified on SBA’s website at <http://www.sba.gov/WOSB>.

* * * * *

(d) An EDWOSB or WOSB concern may submit an offer under an EDWOSB or WOSB set-aside when the offeror—

(1) Qualifies as a small business concern under the size standard corresponding to the NAICS code assigned to the contract; and

(2)(i) For an EDWOSB set-aside, is certified pursuant to 13 CFR 127.300 as an EDWOSB or has a pending application for EDWOSB certification in the DSBS (see 13 CFR 127.504(a)); or

(ii) For a WOSB set-aside, is certified pursuant to 13 CFR 127.300 as an EDWOSB or WOSB, or has a pending application for EDWOSB or WOSB certification in the DSBS (see 13 CFR 127.504(a)).

(e) The contracting officer shall verify that offers received are eligible for consideration for award by checking SAM to see if the EDWOSB or WOSB concern is designated as a certified concern or checking DSBS for a pending application for certification.

(1) If the offeror is designated as certified in SAM or has a pending application for certification in DSBS, proceed with the offer evaluation.

(2) Unless the offeror is designated as certified in SAM or has a pending application for certification in DSBS, the offer is not eligible for award and shall be removed from consideration.

(f) Prior to award, the contracting officer shall verify the apparently successful offeror is certified in SAM, or has a pending application for certification in DSBS. If the apparently successful offeror’s EDWOSB or WOSB certification is pending in DSBS, the

contracting officer shall notify SBA's Director/Government Contracting by email at WOSBpendingcertification@sba.gov, and request SBA's status determination. The contracting officer shall provide SBA with the offeror's name, unique entity identifier, type of set-aside, NAICS code, and solicitation number.

(1) Within 15 calendar days from the date of the contracting officer's notification, SBA will make a determination regarding the offeror's status as an EDWOSB or WOSB eligible under the WOSB program.

(2) If the contracting officer does not receive a determination from SBA within 15 calendar days, the contracting officer at their discretion, may provide SBA additional time to make a determination, or may proceed with award to the next highest evaluated offeror.

(3) The contracting officer shall not make award to an offeror who is not a certified EDWOSB or WOSB concern eligible under the WOSB program.

* * * * *

(i) The SBA procurement center representative (PCR) may recommend use of the WOSB Program. If the contracting officer rejects a recommendation by SBA's PCR—

(1) The contracting officer shall notify the PCR as soon as practicable;

* * * * *

- 10. Amend section 19.1506 by:
 - a. Revising the section heading;
 - b. In paragraphs (a) introductory text and (b) introductory text removing the phrase “sole source” and adding the phrase “sole-source” in its place;
 - c. Redesignating paragraph (d) as paragraph (e);
 - d. Adding a new paragraph (d); and
 - e. In newly redesignated paragraph (e), removing the phrase “sole source” and adding the phrase “sole-source” in its place.

The revision and addition read as follows:

19.1506 Women-Owned Small Business Program sole-source awards.

* * * * *

(d) A contracting officer shall only award a sole-source contract to a concern that has been certified pursuant to 13 CFR 127.300 as an EDWOSB or WOSB eligible under the WOSB program. Contracting officers shall not request a status determination from SBA on pending applications for certification for EDWOSB or WOSB sole-source awards.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 11. Amend section 52.212–3 by:
 - a. Revising the date of the provision;
 - b. In paragraph (a):
 - i. In the definition “Economically disadvantaged women-owned small business (EDWOSB) concern” removing the phrase “13 CFR part 127” and adding the phrase “13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300” in its place;
 - ii. Revise the definition “Women-owned small business (WOSB) concern eligible under the WOSB Program”; and
 - c. Revising paragraphs (c)(6) and (7);
- The revisions read as follows:

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

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (Oct 2022)

* * * * *

(a) * * *
Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

* * * * *

(c) * * *
 (6) *WOSB joint venture eligible under the WOSB Program.* The offeror represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: ____.*]

(7) *Economically disadvantaged women-owned small business (EDWOSB) joint venture.* The offeror represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: ____.*]

* * * * *

- 12. Amend section 52.212–5 by:
 - a. Revising the date of the clause;
 - b. In paragraph (b)(23), removing the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place; and
 - c. In paragraph (b)(24), removing the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place.

The revision reads 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 (OCT 2022)

* * * * *

- 13. Amend section 52.219–1 by:
 - a. Revising the date of the provision;
 - b. In paragraph (a), revising the definitions “Economically disadvantaged women-owned small business (EDWOSB) concern” and “Women-owned small business (WOSB) concern eligible under the WOSB Program”; and
 - c. Revising paragraphs (c)(4) and (5).
- The revisions read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Oct 2022)

(a) * * *
Economically disadvantaged women-owned small business (EDWOSB) concern means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

* * * * *

Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127) means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

* * * * *

(c) * * *
 (4) *Women-owned small business (WOSB) joint venture eligible under the WOSB Program.* The offeror represents as part of its offer that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: ____.*]

(5) *Economically disadvantaged women-owned small business (EDWOSB) joint venture.* The offeror represents as part of its offer that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR

127.506(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: ____.]

* * * * *

■ 14. Amend section 52.219–28 by revising the date of the clause and paragraphs (h)(4) and (5) to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (Oct 2022)

* * * * *

(h) * * *

(4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: ____.]

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: ____.]

* * * * *

■ 15. Amend section 52.219–29 by revising the date of the clause, paragraphs (a) and (c), and the paragraph (d) subject heading to read as follows:

52.219–29 Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.

* * * * *

Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Oct 2022)

(a) *Definition. Economically disadvantaged women-owned small business (EDWOSB) concern*, as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and is certified pursuant to 13 CFR 127.300 as an EDWOSB. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

* * * * *

(c) *General.* (1) For EDWOSB set-aside procurements, offers are solicited only from certified EDWOSB concerns or EDWOSB concerns with a pending application for certification in the Dynamic Small Business Search (DSBS).

(2) For EDWOSB sole-source awards, offers are solicited only from certified EDWOSB concerns.

(3) Offers received from other concerns will not be considered.

(4) Any award resulting from this solicitation will be made to a certified EDWOSB concern.

(d) *Joint venture.* * * *

* * * * *

■ 16. Amend section 52.219–30 by revising the date of the clause, paragraphs (a) and (c), and the paragraph (d) subject heading to read as follows:

52.219–30 Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

* * * * *

Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Oct 2022)

(a) *Definition. Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127), as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300 as a WOSB. A certified EDWOSB is automatically eligible as a certified WOSB.

* * * * *

(c) *General.* (1) For WOSB set-aside procurements, offers are solicited only from certified WOSB concerns eligible under the WOSB Program or WOSB concerns with a pending application for certification status in the Dynamic Small Business Search (DSBS).

(2) For WOSB sole-source awards, offers are solicited only from certified WOSB concerns.

(3) Offers received from other concerns shall not be considered.

(4) Any award resulting from this solicitation will be made to a certified WOSB concern eligible under the WOSB Program.

(d) *Joint venture.* * * *

* * * * *

[FR Doc. 2022–20343 Filed 9–22–22; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 19

[FAC 2022–08; Item V; Docket No. FAR–2022–0052; Sequence No. 3]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to address an internal administrative action.

DATES: Effective September 23, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2022–08, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes administrative changes to 48 CFR parts 4 and 19. The date change is to provide additional time to implement the policy addressing the assignment of North American Industry Classification System codes to orders placed under multiple award contracts, as covered by changes made by FAR Case 2014–002 Set-Asides Under Multiple Award Contracts, 85 FR 11746.

List of Subjects in 48 CFR Parts 4 and 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 parts 4 and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 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.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.1202 [Amended]

■ 2. Amend section 4.1202 by removing from paragraph (a) introductory text the date “October 1, 2022” and adding the date “October 1, 2025” in its place.