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Department of Defense

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48 CFR Parts 4, 5, et al.

**Federal Acquisition Circular 2005–02;
Federal Acquisition Regulations;
Procurement Program for Service-
Disabled Veteran-Owned Small Business
Concerns; Small Entity Compliance Guide;
Final Rules**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005-02; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council in this Federal Acquisition Circular (FAC) 2005-02. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including

the SECG, is available via the Internet at <http://www.acqnet.gov/far>.

DATES: For effective date, see separate document which follows.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005-02, FAR case 2004-002. Interested parties may also visit our Web site at <http://www.acqnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns	2004-002	Cundiff.

SUPPLEMENTARY INFORMATION: A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to the specific item number and subject set forth in the document following this item summary.

FAC 2005-02 amends the FAR as specified below:

Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns (FAR Case 2004-002)

This final rule provides for set-aside and sole source procurement authority for service-disabled veteran-owned small business (SDVOSB) concerns. It amends the Federal Acquisition Regulation (FAR) interim rule that was published in the **Federal Register** at 69 FR 25274, May 5, 2004, to implement Section 308 of the Veterans Benefits Act of 2003, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans (Pub. L. 108-183). The interim rule provided that contracting officers may: (1) Award contracts on the basis of competition restricted to service-disabled veteran-owned small businesses (SDVOSB) if there is a reasonable expectation that two or more SDVOSB concerns will submit offers and that the award can be made at a fair market price, or (2) award a sole source contract to a responsible SDVOSB concern when there is not a reasonable expectation that two or more SDVOSB concerns would offer, the anticipated contract price (including options) will not exceed \$5 million (for manufacturing) or \$3 million otherwise, and the contract award can be made at a fair and reasonable price. This final rule is published in conjunction with two rules published by the Small Business Administration (SBA).

Dated: March 16, 2005.

Rodney P. Lantier,
Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-02 is effective March 23, 2005.

Dated: March 16, 2005.

Deidre A. Lee,
Director, Defense Procurement and Acquisition Policy.

Dated: March 16, 2005.

Patricia A. Brooks,
Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: March 15, 2005.

Tom Luedtke,
Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.

[FR Doc. 05-5655 Filed 3-22-05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 5, 13, 15, 19, 42, 44, and 53

[FAC 2005-02; FAR Case 2004-002]

RIN 9000-AJ92

Federal Acquisition Regulation; Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns

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 amending the Federal Acquisition Regulation (FAR) governing the procurement program for Service-Disabled Veteran-Owned Small Business Concerns (SDVOSB). The final rule retains the interim rule with changes. The final rule deletes commissary or exchange resale items from a list of actions excluded from the SDVOSB program and modifies protest procedures. The final rule also includes technical corrections adding service-disabled veteran-owned small, veteran-owned small, and HUBZone small business concerns to the list of socioeconomic programs, and makes changes to the Optional Form 347, Order for Supplies and Services, Standard Form 1447, Solicitation/Contract, and Standard Form 1449,

Solicitation/Contract/Order for Commercial Items.

DATES: *Effective Date:* March 23, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2005-02, FAR case 2004-002.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR case was opened to implement section 308 of the Veterans Benefit Act of 2003 (Public Law 108-183, 15 U.S.C. 657f), "Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans." The law provides that contracting officers may award contracts on the basis of competition restricted to service-disabled veteran-owned small businesses (SDVOSB) if there is a reasonable expectation that two or more SDVOSBs will submit offers and that the award can be made at a fair market price; or award a sole source contract to a responsible SDVOSB when there is not a reasonable expectation that two or more SDVOSBs would submit offers, the anticipated contract price (including options) will not exceed \$5 million (for manufacturing) or \$3 million otherwise, and the contract award can be made at a fair and reasonable price. The rule also limited use of SDVOSB procurement authority to procurements that would not otherwise be made from Federal Prison Industries (section 4124 or 4125 of Title 18.

An interim rule was published in the *Federal Register* at 69 FR 25274, May 5, 2004, and invited comments by July 6, 2004. The rule amended the Federal Acquisition Regulation (FAR) to implement Pub. L. 108-183, 15 U.S.C. 657f. Thirty-five (35) comments from 17 respondents were received. The Small Business Administration (SBA) published an interim rule in the *Federal Register* at 69 FR 25262, May 5, 2004. The SBA's final rule revises protest procedures as a result of public comments it received. Additionally, on February 24, 2005, SBA published an interim rule detailing the appeal procedures, as a result of a public comment it received. Therefore, in order to avoid any potential conflict between the FAR and SBA's final rule on appeals and to streamline the regulations, FAR 19.307 is revised by shortening the protest appeal discussion to be a cross reference to 13 CFR part 134. The Councils considered all of the public

comments and recommendations on the FAR rule in developing this final rule. The specific FAR comments and the corresponding response are summarized below.

a. *Exclusions at FAR 19.1404.* Three commenters expressed concern that the exclusions from the SDVOSB procurement program specified in paragraphs (b), (c), (d) and (e) of FAR 19.1404 go beyond those contained in Pub. L. 108-183, 15 U.S.C. 657f.

Disposition. Partially accepted. The Councils have removed the exclusion in paragraph (e) for commissary or exchange resale items, as these items are subject to separate statutes and regulations. The Councils determined that the remaining exclusions are appropriate. The exclusions at FAR 19.1404(b) and (c) address orders placed against indefinite delivery contracts and Federal Supply Schedules. The SDVOSB procurement program applies to the award of a contract; therefore, the program will have been already considered in the award of the underlying contracts and is not applicable to the placement of orders under those contracts.

The exclusion in 19.1404(d) for the 8(a) program is consistent with Small Business Administration (SBA) regulations. Under these regulations, requirements are offered by Agencies and accepted by the SBA for performance under the 8(a) Business Development Program. To ensure the integrity of the business development aspects of the program, normally the requirement is retained for exclusive 8(a) participation, but may be released by the SBA as indicated in FAR 19.1404(d).

b. *Delay implementation until FPDS-NG is updated.* One commenter questioned whether the effective date of the rule was premature given that the background section of the rule stated that the Federal Procurement Data System-Next Generation (FPDS-NG) has not yet been updated to capture information regarding awards under the program.

Disposition. Not accepted. The SDVOSB program was mandated by statute. The benefits under this program cannot be delayed because of underlying Government data reporting systems. The Councils anticipate and expect that contracting officers will pursue their SDVOSB goals, notwithstanding the need for the FPDS-NG to be updated to reflect the SDVOSB procurement authorities.

c. *Rule establishes unauthorized prerequisite to sole source awards to SDVOSB.* Three commenters expressed concern that the interim rule changed

the intent of Pub. L. 108-183, 15 U.S.C. 657f, by establishing in FAR 19.1405 set aside procedures for SDVOSB that must be satisfied before a sole-source award to a SDVOSB can be made. The commenters recommend that FAR 19.1405 be deleted.

Disposition. Not accepted. The rule is consistent with the statute. It does not establish a requirement that a contracting officer satisfy the set-aside requirement before being able to award a sole source contract. If market research indicates that there is only one SDVOSB source capable of satisfying the requirement at a fair and reasonable price, the contracting officer may award on a sole-source basis. If market research indicates two or more SDVOSBs are capable of fulfilling the requirement, the contracting officer may set-aside the requirement. In the event where only one acceptable SDVOSB offer is received in response to the set-aside, the contracting officer may make award to that offeror.

d. *No prohibition against SDVOSB sole source awards below the Simplified Acquisition Threshold (SAT).* One commenter expressed concern that there is no explicit prohibition against use of a SDVOSB sole source below the SAT similar to the HUBZone coverage at FAR 19.1306(a)(4). This commenter notes that since the statutory language for both the HUBZone and SDVOSB programs is silent regarding whether sole-source can be used below the SAT and the other criteria for use are the same in both statutes, SDVOSB sole-source awards below the SAT should be prohibited as they are for HUBZones.

Disposition. Not accepted. To ensure that agencies have the broadest set of options to aggressively pursue the statutory 3% contracting goal for SDVOSBs, the Councils did not include in the interim rule a prohibition on sole source awards under the SAT. This is consistent with the SBA interim rule that provides for SDVOSB sole source awards under the SAT. As the commenter notes, there is nothing in the statute that prohibits sole source awards under the SAT, and the Councils do not believe that there is any compelling justification for revising the final rules in this respect since such a change would only limit opportunities for SDVOSBs. The Councils recognize the different regulatory treatment of HUBZone sole source awards under the SAT, but changes to the HUBZone program are outside the scope of the current case.

e. *Require SDVOSB Certification.* Two commenters recommended that SDVOSB status be certified by the Department of Veterans Affairs (DVA) or

the Department of Defense (DoD) to avoid fraud and abuse.

Disposition. Not accepted. The SBA, which has the statutory authority to administer the SDVOSB program, has determined that SDVOSB status should be on a self-representation basis. If the disability status of the owner of a firm is challenged, the SBA will rely on existing Department of Veteran Affairs or DoD determinations regarding the owner's status as a veteran or service-disabled veteran (see FAR 19.307).

f. *Establish a SDVOSB Mentor-Protégé Program.* One commenter recommended that the final rule establish guidelines for a SDVOSB Mentor-Protégé Program similar to the SBA's 8(a) regulations (13 CFR 124.520). The same commenter recommended that the final rule establish provisions to award SDVOSB set-aside contracts to SDVOSB Mentor-Protégé joint ventures very similar to SBA's 8(a) Mentor-Protégé joint ventures (13 CFR 124.513).

Disposition. Not accepted. The SBA has authority under the Small Business Act to administer the 8(a) Mentor-Protégé Program. SBA current regulations do not provide for an SDVOSB Mentor-Protégé program. Therefore, this recommendation falls outside the scope of this rule.

g. *Change the threshold for the nonmanufacturer rule.* One commenter recommended changes to the "nonmanufacturing rule" to either exclude SDVOSBs from the \$25,000 restriction at 19.102(f)(7)(i)(B) or raise the threshold to \$1 million.

Disposition. Not accepted. The SBA has exclusive authority to establish the threshold, which is set at \$25,000. Therefore, the recommendation falls outside of the scope of this rule.

h. *Monitoring of Subcontracting SDVOSB goal.* Two commenters recommended SBA take the following steps to improve compliance with SDVOSB subcontracting plans.

- Base SBA contractor reviews on compliance risks, such as size of the contract, date of the last review, and previous ratings and send the results of the reviews to contracting officers, especially when the ratings are marginal. SBA should produce an annual list of prime contractors who meet their small business plans by category.

- The primes who fail to meet their plans for two consecutive years should be barred from federal contracting until a suitable corrective action plan is received and approved. Or, if this is not feasible, enforce FAR 52.219-16, "Liquidated Damages—Subcontracting Plan."

- Prime contractors who consistently meet their subcontracting plans should be rewarded by receiving priority in future contracts. FAR 52.219-10, Incentive Subcontracting Program should be vigorously used where applicable.

Disposition. Partially accepted. SBA has taken action to implement the first recommendation. The Councils do not believe that the debarment action is feasible, since debarment is a severe sanction taken only when no other remedy is available to protect the Government's interests. Liquidated damages are assessed under FAR 52.219-16, which establishes a standard of willful or intentional actions to frustrate the contract's subcontracting plan before the damages can be assessed. Regarding affording priority to contractors who consistently meet goals, a contractor who receives a positive past performance evaluation for achieving its subcontracting goals has a better chance of receiving future contracts. Conversely, a contractor who fails to make good faith efforts is subject to negative past performance evaluations (which could affect its ability to receive future contracts). The Councils agree that the Incentive Subcontracting Program should be vigorously used where applicable, but no change to the rule for this, or the other recommendations in the comment, is necessary.

i. *8(a)/SDB program.*

- *Allow Migration of work from 8(a) to SDVOSB.* One commenter recommended that the final rule allow business concerns in the 8(a) SDB Program to migrate work from that program to the SDVOSB Procurement Program if eligible, and allow SDVOSB concerns to migrate work to the 8(a) SDB Program if eligible.

Disposition. Not accepted. The two programs have different purposes. The 8(a) program is a business development program. The SDVOSB program is a procurement mechanism to enhance Federal contracting opportunities for SDVOSBs. Given the different purposes of these two programs, allowing migration from one program into another would adversely impact both programs by limiting business development opportunities available for 8(a) firms and procurement opportunities for SDVOSB firms.

- *Provide equal consideration as 8(a) SDB Program including goals.* Two commenters suggested that SDVOSB concerns be provided equal consideration as those business concerns in the 8(a) Business Development Program, including

equivalent government-wide procurement goals.

- *Disposition. Not accepted.* It is important to note that the 8(a) Program is a business development program. While the 8(a) Program offers a broad scope of assistance to socially and economically disadvantaged small businesses, the SDVOSB Program strictly pertains to benefits in Federal contracting. Congress authorized sole source awards to 8(a) firms, even when multiple firms can satisfy the requirement, as a business development tool. Further, Congress established separate Governmentwide goals for participation by Small Disadvantaged Businesses and SDVOSBs. Although Congress did not establish a mandatory goal for 8(a) small businesses, as a matter of policy, the SBA negotiates an 8(a) goal with each Federal Agency. Consequently, the comments are outside the scope of this rule.

j. *Expand authority for sole source awards.* Three commenters recommended that the final rule allow a sole source award to an SDVOSB up to the 8(a) sole-source dollar thresholds regardless of whether there are two or more SDVOSB competitors capable of satisfying the requirement.

Disposition. Not accepted. The statute specifically states that a sole source award is allowed only when market research establishes that only one SDVOSB is capable of meeting the Government's requirements at a fair and reasonable price, and only when the award price will not exceed \$3 million (\$5 million for manufacturing.)

k. *Establish an Order of Precedence.* Two commenters expressed concern that the interim rule did not establish the order of precedence for SDVOSB set-asides relative to the 8(a) and HUBZone set-aside programs.

Disposition. Not accepted. The FAR rule implements Pub. L. 108-183, 15 U.S.C. 657f, as written. The statute established a discretionary set-aside and sole-source authority for SDVOSBs. The statute did not establish a preference for SDVOSBs relative to the 8(a) or HUBZone programs.

l. *Provide for a Price Evaluation Adjustment.* Four commenters recommended that SDVOSB concerns be entitled to the same 10% price evaluation adjustment when competing for Government opportunities as established in the 8(a) program under the FAR clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns. One commenter recommended that a SDVOSB should be considered a Small Disadvantaged Business (SDB).

Disposition. Not accepted. There is no statutory authority to afford SDVOSBs the same price evaluation adjustment as certain SDBs, whereas the price evaluation adjustment for certain SDBs was authorized by section 7102 of Pub. L. 103-355. An SDVOSB can be certified as an SDB if it meets the eligibility criteria established by SBA.

m. *Replace "may" with "shall".* Four commenters expressed concern that the order of precedence established in 19.800(e), 19.501(c), 19.1305(a) and the "may set aside" and "shall set-aside" language make the Service-Disabled Veteran Owned Small Business (SDVOSB) the lesser priority relative to the other set-aside programs. These commenters request change in language at 19.1405 and that the words "shall set-aside" be used in every place that "may set-aside" is found.

Disposition. Not accepted. The FAR rule implements Pub. L. 108-183, 15 U.S.C. 657f, as written. The statute established a discretionary, not mandatory, set-aside authority for SDVOSBs.

n. *Apply a citizenship restriction.* One commenter suggested that the Public Law should be written to state that it is restricted to those U.S. Veterans that are also citizens of the United States and not dual citizenship individuals living abroad.

Disposition. Not accepted. The Council must implement the law as written. Pub. L. 108-183, 15 U.S.C. 657f, does not include a residency or citizenship requirement to qualify for SDVOSB status.

o. *Reassign Advocacy Responsibility for the Regulatory Flexibility Act.* One commenter suggested replacing the Chief Counsel at SBA with the Office of Management and Budget (OMB) as the senior reporting agency for advocacy responsibility under the Regulatory Flexibility Act.

Disposition. Partially accepted. Under the authority of the Regulatory Flexibility Act, SBA's Chief Counsel for Advocacy reviews Regulatory Flexibility Act analyses. In addition, OMB reviews as a matter of course the analyses prior to publication of any rule. Accordingly, existing procedure already implements the intent of this suggestion, and no further action is required. The Chief Counsel for Advocacy's authority is statutory and cannot be changed by this regulation.

p. *Reserve 25% of all procurement actions for SDVOSB.* One commenter suggested that the rule be changed to encourage agencies to set aside 25% of their procurements for competition among SDVOSB. To ensure achievement of this goal, the commenter

recommended that the rule provide for—

1. Including in all contracts over \$15 million a requirement that a contractor set aside a portion of the work for an SDVOSB;

2. GSA notification to agencies that fail to meet the goal;

3. Publication in the *Federal Register* of a list of agencies that fail to meet the goal during the fiscal year and the corrective actions those agencies will take during the following fiscal year to meet the goal;

4. Establishment of an Office of Economic Advocacy in OMB to monitor, along with SBA and GSA, compliance with agency achievement of the goal and to report to the President and Congress on the climate in America for small businesses;

5. Debarment of any contractor that fails to meet the 25% goal for two consecutive fiscal years; and

6. Suspension of the contracting officer warrant of any contracting officer responsible for awarding a contract that results in an agency not meeting the goal.

Disposition. Not accepted. The Councils are unclear as to whether the commenter is advocating establishing goals based on dollars or actions. If the commenter is advocating dollar goal changes, a Governmentwide goal for each small business category is established pursuant to the Small Business Act. The goal for small business concerns in general is 23% of the total value of all prime contracts awarded each fiscal year. A goal of not less than 3% of the total value of all prime contract and subcontract awards for each fiscal year has been established for SDVOSB concerns. It is beyond the scope of this rule, and impracticable, to establish a 25% goal of procurements for SDVOSB.

If the commenter is advocating goals for actions, the Councils believe that such a change would not result in a meaningful measure of contracting opportunities given the high volume of actions at small-dollar amounts. We do note that the rule provides contracting officers the authority to make sole source awards or set aside procurements in order to meet the Governmentwide goal of awarding 3% of the procurement dollars to SDVOSBs.

The Councils believe that the recommended oversight and remedial actions are outside the scope of the case. However, agency and contractor achievement of goals is already being monitored by SBA, which is already required to report agency achievement of small business goals, established by the President pursuant to the Small

Business Act, on an annual basis to Congress and OMB.

q. *Include SDVOSB as an Evaluation Point.* One commenter suggested that FAR 19.1406, Sole source awards for service-disabled veteran-owned small business concerns, be revised to require that RFPs include SDVOSB as an evaluation point for procurements in excess of \$15M during the contract award period; "where the procurement is in excess of \$15,000,000 a copy of the source selection evaluation guidance will be made public for inspection and review by GSA, SBA;" and "notification to the Office of Economic Advocacy in OMB."

Disposition. Not accepted. Although the commenter refers to FAR 19.1406, which pertains to sole-source SDVOSB awards, the Councils believe the commenter is recommending a source selection evaluation factor for SDVOSB subcontracting be required in all competitive procurements above \$15 million. General evaluation factors are identified in the FAR. Although there is no specific requirement to include SDVOSB participation as an evaluation factor, past performance is required to be evaluated in virtually all source selections. This past performance data used is derived from FAR 42.1502(a), which requires an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the FAR clause at 52.219-9, Small Business Subcontracting Plan, which includes goals for SDVOSB participation. In addition, all solicitations that require a subcontracting plan will require agencies to negotiate acceptable goals for each small business category, including SDVOSBs. Accordingly, existing regulations already accommodate evaluation of past and proposed SDVOSB participation.

All evaluation factors are included in the solicitation; there are no factors that are not identified. Involvement of GSA in the review of these factors would be duplicative and inefficient. SBA representatives and Agency small business specialists review and make recommendations on solicitations and source selection plans. GSA has no oversight authority on Agency acquisitions.

With regard to establishing a new Office of Economy Advocacy in OMB, the comment is beyond the scope of the rule.

This is a significant regulatory action and, therefore, was 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 Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows.

This final rule revises the Federal Acquisition Regulation in order to comply with recently enacted Public Law 108-183, Veterans Benefits Act of 2003 (Dec. 16, 2003), Section 308, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans to allow for discretionary set-aside and sole source procurement authority for service-disabled veteran-owned small business (SDVOSB) concerns. The objective is to provide Federal contracting officials a means to improve their performance toward the statutorily mandated 3% government-wide goal for procurement from SDVOSBs. The changes may 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 law provides that the contracting officer may use the set-aside and sole source procurement authority when contracting with SDVOSB concerns. Although the percentage of service-disabled veteran-owned small businesses is small, the set aside and sole source procurement authority will have a small impact on other small businesses.

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

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, the changes to FAR do not impose additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 5, 13, 15, 19, 42, 44, and 53

Government procurement.

Dated: March 16, 2005.

Rodney P. Lantier

Director, Contract Policy Division.

Interim Rule Adopted as Final With Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 4, 5, 13, 15, 19, 42, 44, and 53, which was published in the *Federal Register* at 69 FR 25274, May 5, 2004, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 4, 5, 13, 15, 19, 42, 44, and 53 is revised to read as follows:

Authority: Authority. 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c);

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.502 by revising paragraph (b)(3) to read as follows:

4.502 Policy.

* * * * *

(b) * * *

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns;

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.503 by revising the second sentence in paragraph (a)(1) to read as follows:

5.503 Procedures.

(a) * * *

(1) * * * Contracting officers shall give small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns maximum opportunity to participate in these acquisitions.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. Amend section 13.002 by revising paragraph (b) to read as follows:

13.002 Purpose.

* * * * *

(b) Improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts;

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 5. Amend section 15.404-4 by revising the first sentence in paragraph (d)(1)(iii) to read as follows:

15.404-4 Profit.

(d) * * *

(1) * * *

(iii) *Federal socioeconomic programs.*

This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by

socially and economically disadvantaged individuals, women-owned small business concerns, veteran-owned, HUBZone, service-disabled veteran-owned small business concerns, handicapped sheltered workshops, and energy conservation.

* * *

* * * * *

■ 6. Amend section 15.407-2 by revising paragraph (d)(2) to read as follows:

15.407-2 Make or buy programs.

* * * * *

(d) * * *

(2) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 7. Amend section 19.307 by—

■ a. Removing from paragraph (e) “Contracting, U.S.” and adding “Contracting AA/GC, U.S.” in its place;

■ b. Revising paragraph (f);

■ c. Revising the second sentence of paragraph (h);

■ d. Revising paragraph (i); and

■ e. Removing paragraphs (j) through (m).

The revised text read as follows:

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

* * * * *

(f) The referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including the solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the contract was sole-source or set-aside; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer (*i.e.*, made the self-representation that it was a service-disabled veteran-owned small business concern); whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when

the protest was submitted; when the protester received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded.

* * * * *

(h) * * * When making its determinations of veteran, service-disabled veteran, or service-disabled veteran with a permanent and severe disability status, the SBA will rely upon determinations made by the Department of Veteran's Affairs, Department of Defense determinations, or such determinations identified by documents provided by the U.S. National Archives and Records Administration. * * *

(i) SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

19.1404 [Amended]

■ 8. Amend section 19.1404 by—

■ a. Adding at the end of paragraph (c) "or";

■ b. Removing from paragraph (d) "; or" and adding a period at the end of the sentence; and

■ c. Removing paragraph (e).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 9. Amend section 42.302 by revising paragraphs (a)(52) through (a)(55) to read as follows:

42.302 Contract administration functions.

(a) * * *

(52) Review, evaluate, and approve plant or division-wide small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged,

women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small, small disadvantaged women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting plans, including documentation of compliance with similar plans under prior contracts.

(55) By periodic surveillance, ensure the contractor's compliance with small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.

* * * * *

■ 10. Amend section 42.501 by revising paragraph (b) to read as follows:

42.501 General.

* * * * *

(b) Postaward orientation is encouraged to assist small business, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns (see Part 19).

* * * * *

■ 11. Amend section 42.502 by revising paragraphs (i) and (j) to read as follows:

42.502 Selecting contracts for postaward orientation.

* * * * *

(i) Contractor's status, if any, as a small business, small disadvantaged, women-owned, veteran-owned, HUBZone, or service-disabled veteran-owned small business concern;

(j) Contractor's performance history with small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting programs;

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 12. Amend section 44.303 by revising paragraph (e) to read as follows:

44.303 Extent of review.

* * * * *

(e) Policies and procedures pertaining to small business concerns, including small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns;

* * * * *

PART 53—Forms

53.212 [Amended]

■ 13. Amend section 53.212 by removing "(APR 2002)" and adding "(Rev. 3/2005)" in its place.

53.213 [Amended]

■ 14. Amend section 53.213 by—

■ a. Removing from paragraph (a) "(Rev. 4/02)" and adding "(Rev. 3/2005)" in its place; and

■ b. Removing from paragraph (f) "(Rev. 4/02)" and adding "(Rev. 3/2005)" in its place; and removing "(Rev. 6/95)" and adding "(Rev. 3/2005)" in its place.

53.214 [Amended]

■ 15. Amend section 53.214 by removing from paragraph (d) "(5/88)" and adding "(Rev. 3/2005)" in its place.

53.236-1 [Amended]

■ 16. Amend section 53.236-1 by removing from paragraph (e) "(Rev. 6/95)" and adding "(Rev. 3/2005)" in its place.

■ 17. Revise section 53.301-1447 to read as follows:

53.301-1447 Solicitation/Contract.

SOLICITATION/CONTRACT			1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING	PAGE OF OF
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27						
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE	4. SOLICITATION NUMBER		5. SOLICITATION TYPE <input type="checkbox"/> SEALED BIDS (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	
7. ISSUED BY		CODE	8. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS NAICS: <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SIZE STANDARD: <input type="checkbox"/> 8(A)			
9. (AGENCY USE) NO COLLECT CALLS						
10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION) <input type="checkbox"/> SUPPLIES <input type="checkbox"/> SERVICES						
11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.			12. ADMINISTERED BY _____ CODE _____			
13. CONTRACTOR OFFEROR CODE _____ FACILITY CODE _____			14. PAYMENT WILL BE MADE BY _____ CODE _____			
TELEPHONE NO. _____ DUNS NO. _____ <input type="checkbox"/> CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK:			
15. PROMPT PAYMENT DISCOUNT			16. AUTHORITY FOR USING OTHER <input type="checkbox"/> 10 U.S.C. 2304 <input type="checkbox"/> 41 U.S.C. 253 THAN FULL AND OPEN COMPETITION () ()			
17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT	
23. ACCOUNTING AND APPROPRIATION DATA					24. TOTAL AWARD AMOUNT (FOR GOVT. USE ONLY)	
25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO _____ ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.			26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
27. SIGNATURE OF OFFEROR/CONTRACTOR			28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
NAME AND TITLE OF SIGNER (TYPE OR PRINT)		DATE SIGNED	NAME OF CONTRACTING OFFICER		DATE SIGNED	

NO RESPONSE FOR REASONS CHECKED			
	CANNOT COMPLY WITH SPECIFICATIONS		CANNOT MEET DELIVERY REQUIREMENT
	UNABLE TO IDENTIFY THE ITEM(S)		DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
OTHER <i>(Specify)</i>			
	WE DO	WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEM(S) INVOLVED	
NAME AND ADDRESS OF FIRM <i>(Include ZIP Code)</i>		SIGNATURE	
		TYPE OR PRINT NAME AND TITLE OF SIGNER	
<p>FROM:</p> <p style="text-align: center;">TO:</p> <p>SOLICITATION NO. _____</p> <p>DATE AND LOCAL TIME _____</p> <p style="text-align: right;">AFFIX STAMP HERE</p>			

■ 18. Revise section 53.301-1449 to read **53.301-1449 Solicitation/Contract/Order for Commercial Items.** as follows:

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER	PAGE 1 OF
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME		b. TELEPHONE NUMBER <i>(No collect calls)</i>	8. OFFER DUE DATE/ LOCAL TIME
9. ISSUED BY CODE			10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS NAICS: <input type="checkbox"/> HUBZONE SMALL BUSINESS SIZE STANDARD: <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A)		
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING	
15. DELIVER TO CODE			14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP		
17a. CONTRACTOR/OFFEROR CODE FACILITY CODE			16. ADMINISTERED BY CODE		
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			18a. PAYMENT WILL BE MADE BY CODE		
TELEPHONE NO.			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM		
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
<i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>					
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT <i>(For Govt. Use Only)</i>	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA			<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA			<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED			<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA <i>(SIGNATURE OF CONTRACTING OFFICER)</i>		
30b. NAME AND TITLE OF SIGNER <i>(Type or print)</i>	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER <i>(Type or print)</i>	31c. DATE SIGNED		

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
--	-----------	---

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
--	--------------------	---------------------------------	--	------------------

38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
---------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (<i>Print</i>)	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT (<i>Location</i>)
		42c. DATE REC'D (<i>YY/MM/DD</i>)

■ 19. Revise section 53.302-347 to read **53.302-347 Order for Supplies or Services.**
as follows:

ORDER FOR SUPPLIES OR SERVICES						PAGE	OF	PAGES			
IMPORTANT: Mark all packages and papers with contract and/or order numbers.											
1. DATE OF ORDER		2. CONTRACT NO. (If any)		6. SHIP TO:							
3. ORDER NO.		4. REQUISITION/REFERENCE NO.		a. NAME OF CONSIGNEE							
5. ISSUING OFFICE (Address correspondence to)				b. STREET ADDRESS							
7. TO:				c. CITY		d. STATE	e. ZIP CODE				
				f. SHIP VIA							
a. NAME OF CONTRACTOR				8. TYPE OF ORDER <input type="checkbox"/> a. PURCHASE <input type="checkbox"/> b. DELIVERY -- Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract. REFERENCE YOUR: _____ Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.							
b. COMPANY NAME											
c. STREET ADDRESS											
d. CITY		e. STATE	f. ZIP CODE	10. REQUISITIONING OFFICE							
9. ACCOUNTING AND APPROPRIATION DATA				12. F.O.B. POINT							
11. BUSINESS CLASSIFICATION (Check appropriate box(es))				15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date)							
<input type="checkbox"/> a. SMALL		<input type="checkbox"/> b. OTHER THAN SMALL		<input type="checkbox"/> c. DISADVANTAGED		<input type="checkbox"/> g. SERVICE-DISABLED VETERAN-OWNED					
<input type="checkbox"/> d. WOMEN-OWNED		<input type="checkbox"/> e. HUBZone		<input type="checkbox"/> f. EMERGING SMALL BUSINESS							
13. PLACE OF		14. GOVERNMENT B/L NO.		16. DISCOUNT TERMS							
a. INSPECTION		b. ACCEPTANCE									
17. SCHEDULE (See reverse for Rejections)											
ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)					
18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.		17(h) TOT. (Cont. pages)					
21. MAIL INVOICE TO:											
SEE BILLING INSTRUCTIONS ON REVERSE						a. NAME					
						b. STREET ADDRESS (or P.O. Box)					
						c. CITY		d. STATE	e. ZIP CODE		
22. UNITED STATES OF AMERICA BY (Signature)						23. NAME (Typed)					
						17(i) GRAND TOTAL					
TITLE: CONTRACTING/ORDERING OFFICER											

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Regulation; Small
Entity Compliance Guide**

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued
under the joint authority of the
Secretary of Defense, the Administrator
of General Services and the
Administrator for the National
Aeronautics and Space Administration.
This *Small Entity Compliance Guide* has
been prepared in accordance with
Section 212 of the Small Business
Regulatory Enforcement Fairness Act of

1996. It consists of a summary of the
rule appearing in Federal Acquisition
Circular (FAC) 2005-02 which amends
the FAR. An asterisk (*) next to a rule
indicates that a regulatory flexibility
analysis has been prepared. Interested
parties may obtain further information
regarding this rule by referring to FAC
2005-02, which precedes this
document. These documents are also
available via the Internet at [http://
www.acqnet.gov/far](http://www.acqnet.gov/far).

FOR FURTHER INFORMATION CONTACT:
Laurieann Duarte, FAR Secretariat, (202)
501-4755. For clarification of content,
contact Rhonda Cundiff at (202) 501-
0044.

*** Procurement Program for Service-
Disabled Veteran-Owned Small
Business Concerns (FAR Case 2004-
002)**

This final rule provides for set-aside
and sole source procurement authority
for service-disabled veteran-owned
small business (SDVOSB) concerns. It
amends the Federal Acquisition
Regulation (FAR) interim rule that was
published in the *Federal Register* at 69
FR 25274, May 5, 2004, to implement
Section 308 of the Veterans Benefits Act

of 2003, Procurement Program for Small
Business Concerns Owned and
Controlled by Service-Disabled Veterans
(Pub. L. 108-183). The interim rule
provided that contracting officers may:
(1) award contracts on the basis of
competition restricted to service-
disabled veteran-owned small
businesses (SDVOSB) if there is a
reasonable expectation that two or more
SDVOSB concerns will submit offers
and that the award can be made at a fair
market price, or (2) award a sole source
contract to a responsible SDVOSB
concern when there is not a reasonable
expectation that two or more SDVOSB
concerns would offer, the anticipated
contract price (including options) will
not exceed \$5 million (for
manufacturing) or \$3 million otherwise,
and the contract award can be made at
a fair and reasonable price. This final
rule is published in conjunction with
two rules published by the Small
Business Administration (SBA).

Dated: March 16, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

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