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Friday  
December 18, 1998

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**Part VI**

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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48 CFR Chapter 1 et al.  
Federal Acquisition Regulations; Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97-10; Introduction**

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

**ACTION:** Summary presentation of final and interim rules, and technical amendments and corrections.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-10. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at <http://www.arnet.gov/far>.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-10 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

**SUPPLEMENTARY INFORMATION:**

Item	Subject	FAR case	Analyst
I	Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (Interim).	97-307	Moss.
II	Limits for Indefinite-Quantity Contracts	98-016	DeStefano.
III	Office of Federal Contract Compliance Programs National Pre-Award Registry	98-607	O'Neill.
IV	Limitation on Allowability of Compensation for Certain Contractor Personnel	97-303	Nelson.
V	Contractor Purchasing System Review Exclusions	97-016	Klein.
VI	Contract Quality Requirements	96-009	Klein.
VII	Mandatory Government Source Inspection	97-027	Klein.
VIII	No-Cost Value Engineering Change Proposals	96-011	Klein.
IX	Evidence of Shipment in Electronic Data Interchange Transactions	97-011	Nelson.
X	Technical Amendments.		

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-10 amends the Federal Acquisition Regulation (FAR) as specified below:

**Item I—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program**

[FAR Case 97-307]

This interim rule amends FAR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 to implement the Small Business Administration Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

**Item II—Limits for Indefinite-Quantity Contracts**

[FAR Case 98-016]

This final rule amends FAR 16.504(a) to clarify that maximum and minimum limits for indefinite-quantity contracts may be expressed as a number of units or dollar value.

**Item III—Office of Federal Contract Compliance Programs National Pre-Award Registry**

[FAR Case 98-607]

This final rule amends FAR part 22 and related clauses at part 52 to (1) inform the procurement community of the availability of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) National Pre-Award Registry (Registry), accessible through the Internet, that contains contractor establishments who have received a preaward clearance within the preceding 24 months, and the option to use the information in the Registry in lieu of submitting a written request for a preaward clearance; and (2) implement revised Department of Labor (DoL) regulations pertaining to equal employment opportunity and affirmative action requirements for Federal contractors and subcontractors.

**Item IV—Limitation on Allowability of Compensation for Certain Contractor Personnel**

[FAR Case 97-303]

The interim rule published as Item XIII of FAC 97-04 is converted to a final rule with minor clarifying amendments at FAR 31.205-6(p)(2). The rule implements Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 808 limits allowable compensation costs for senior executives of contractors to the benchmark year by the Administrator, Office of Federal Procurement Policy (OFPP). The benchmark compensation amount is \$340,650 for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP.

**Item V—Contractor Purchasing System Review Exclusions**

[FAR Case 97-016]

This final rule amends FAR 44.302 and 44.303 to exclude competitively awarded firm-fixed-price and competitively awarded fixed-price contracts with economic price adjustment, and sales of commercial items pursuant to FAR part 12, from the dollar amount used to determine if a contractor's level of sales to the Government warrants the conduct of a CPSR; and to exclude subcontracts awarded by a contractor exclusively in

support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to FAR part 12, from evaluation during a CPSR.

#### Item VI—Contract Quality Requirements

[FAR Case 96-009]

This final rule amends FAR 46.202-4, 46.311, and 52.246-11 to replace references to Government specifications with references to commercial quality standards as examples of higher-level contract quality requirements; to require the contracting officer to indicate in the solicitation which higher-level quality standards will satisfy the Government's requirement; and, if more than one standard is listed in the solicitation, to require the offeror to indicate its selection by checking a block.

#### Item VII—Mandatory Government Source Inspection

[FAR Case 97-027]

This final rule amends FAR 46.402 to facilitate the elimination of unnecessary requirements for Government contract quality assurance at source. This rule deletes the mandatory requirements for Government contract quality assurance at source on all contracts that include a higher-level contract quality requirement, and for supplies requiring inspection that are destined for overseas shipment.

#### Item VIII—No-Cost Value Engineering Change Proposals

[FAR Case 96-011]

The interim rule published as Item X of FAC 97-05 is converted to a final rule without change. The rule revises FAR 48.104-3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

#### Item IX—Evidence of Shipment in Electronic Data Interchange (EDI) Transactions

[FAR Case 97-011]

This final rule revises the clause at FAR 52.247-48 to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased on a free on board (f.o.b.) destination basis with inspection and acceptance at origin.

#### Item X—Technical Amendments

Amendments are being made at FAR 1.106, 19.102, 19.502-5, 32.908, 37.602-3, 42.203, 52.212-5, 52.219-9, 52.222-37, 53.228 and 53.301 in order to update references and make editorial changes.

Dated: December 14, 1998.

**Ralph DeStafano,**

*Acting Director, Federal Acquisition Policy Division.*

#### Federal Acquisition Circular

FAC 97-10

Federal Acquisition Circular (FAC) 97-10 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 97-10 are effective February 16, 1999, except for Item VIII which is effective December 18, 1998, and Items I and X which are effective January 4, 1999.

Dated: December 14, 1998.

Eleanor R. Spector,

*Director, Defense Procurement.*

Dated: December 11, 1998.

Ida M. Ustad,

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

Tom Luedtke,

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

Dated: December 11, 1998.

[FR Doc. 98-33512 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

[FAC 97-10; FAR Case 97-307; Item I]

RIN 9000-AI20

#### Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations covering the Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (hereinafter referred to as the HUBZone Program).

**EFFECTIVE DATE:** January 4, 1999.

**Comment Date:** Comments should be submitted to the FAR Secretariat at the address shown below on or before February 16, 1999 to be considered in the formulation of a final rule.

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

E-Mail comments submitted over the Internet should be addressed to: farcase.97-307@gsa.gov

Please cite FAC 97-10, FAR case 97-307 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-10, FAR case 97-307.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule amends FAR parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 to comply with the SBA's HUBZone Program regulations contained in 13 CFR parts 121, 125, and 126 (63 FR 31896, June 11, 1998). The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in distressed communities in an effort to increase employment opportunities, investment, and economic development in these communities. The Program provides for set-asides for firms that meet the definition of a HUBZone small business concern (SBC), sole source awards to HUBZone SBCs, and price evaluation preferences for HUBZone SBCs in acquisitions conducted using full and open competition; and establishes a Governmentwide goal for HUBZone awards. Until September 30, 2000, ten Government agencies are required to comply with the prime contract HUBZone Program. After that date, the Program will apply to all Federal

agencies employing one or more contracting officers.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

This interim rule 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 purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these zones. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

It is anticipated that the HUBZone Program will benefit small business concerns by increasing the number of Government contracts awarded to them. There is a statutory goal for Government HUBZone small business concerns to receive 3 percent of contract dollars by fiscal year 2003. The HUBZone Act of 1997, Title VI of Public Law 105-135, 111 Stat. 2592 (December 2, 1997), created the HUBZone Program and directed the Administrator of the Small Business Administration (SBA) to promulgate regulations to implement it. This rule further implements the SBA rule. The small entities affected by this rule are those that fit within the definition of a small business concern, as defined by SBA in 13 CFR part 121 and new part 126, and that participate in Government contracting. Because the program is new, we cannot estimate precisely the number or classes of small entities that this rule will affect. However, the SBA estimated that more than 30,000 small businesses will apply for certification as qualified HUBZone small business concerns. This rule requires that a firm be listed on SBA's list of eligible HUBZone small business concerns in order to receive a contracting preference. That requirement is addressed in SBAs rule. This FAR rule requires that Government prime contractors with contracts that require subcontracting plans seek out HUBZone small business concerns as subcontractors as well as maintain records and report on those subcontracts awarded to HUBZone small business concerns. These requirements do not apply to small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. In general, the drafters of this rule modeled its procurement mechanisms, to the extent permitted by the SBA rule, on those already in use within the Federal Government. This approach should make the requirements of the rule immediately familiar to many small businesses that already have extensive experience in dealing with Government contracting offices. Moreover, each

individual mechanism was structured to strike an appropriate balance between the interests of HUBZone and non-HUBZone small businesses, and to minimize the overall burden of compliance on small business.

A copy of the analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite FAR case 97-307 in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the interim rule contains information collection requirements. The interim rule increases the collection requirements currently approved under OMB Control Numbers 9000-0006 and 9000-0007.

OMB Control No. 9000-0006 burden hours have increased from 428,035 to 640,837 to reflect the additional burden of planning, maintaining and reporting subcontract award data on HUBZone small businesses. In addition, burden inappropriately attached to OMB Control No. 9000-0007 that related to planning and maintaining data was transferred to this clearance. OMB Control No. 9000-0007 burden hours have been adjusted to remove hours inappropriately included in this clearance and to add hours to reflect the additional burden associated with reporting HUBZone data. The net difference is an increase, from 90,924 to 91,570 hours. The appropriate paperwork has been forwarded to OMB.

### D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under ADDRESSES. Please cite the corresponding OMB Clearance Number in all correspondence related to the estimate.

### E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made in 13 CFR parts 121, 125, and 126 on June 11, 1998, pertaining to the Small Business Administration (SBA) HUBZone Program. The SBA final rule became effective on September 9, 1998. Section 605 of the Small Business Reauthorization Act of 1997 (Title VI of Public Law 105-135) requires that, 180 days after the SBA issues its final regulations to carry out the HUBZone Program, conforming amendments must be made to the Federal Acquisition Regulation (December 8, 1998). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

### List of Subjects in 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by revising paragraph (d) to read as follows:

#### 5.207 Preparation and transmittal of synopses.

\* \* \* \* \*

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business set-aside or a HUBZone small business set-aside, the appropriate CBD Numbered Note will be cited.

\* \* \* \* \*

**PART 6—COMPETITION REQUIREMENTS**

3. Section 6.205 is added to read as follows:

**6.205 Set-asides for HUBZone small business concerns.**

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 (15 U.S.C. 631 note), contracting officers in participating agencies (see 19.1302) may set aside solicitations to allow only qualified HUBZone small business concerns to compete (see 19.1305).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for qualified HUBZone small business concerns.

4. Section 6.302-5 is amended by adding paragraph (b)(6) to read as follows:

**6.302-5 Authorized or required by statute.**

\* \* \* \* \*

(b) \* \* \*

(6) Sole source awards under the HUBZone Act of 1997—15 U.S.C. 657a (see 19.1306).

\* \* \* \* \*

**PART 7—ACQUISITION PLANNING**

5. Section 7.105 is amended by revising the third sentence of paragraph (b)(1) to read as follows:

**7.105 Contents of written acquisition plans.**

\* \* \* \* \*

(b) *Plan of action*—(1) *Sources*. \* \* \* Include consideration of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19). \* \* \*

\* \* \* \* \*

**PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

6. Section 8.404 is amended by revising the first sentence of paragraph (a) to read as follows:

**8.404 Using schedules.**

(a) *General*. When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of part 13, the small business set-aside provisions of subpart 19.5, and the HUBZone program of subpart 19.13 do not apply, except for the provision at 13.303-2(c)(3). \* \* \*

\* \* \* \* \*

**PART 9—CONTRACTOR QUALIFICATIONS**

7. Section 9.104-3 is amended by revising the last sentence of paragraph (b) to read as follows:

**9.104-3 Application of standards.**

\* \* \* \* \*

(b) \* \* \* If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

\* \* \* \* \*

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

8. Section 12.301 is amended at the end of paragraph (b)(2) by removing the semicolon and adding a period; and adding a sentence to read as follows:

**12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* Use the provision with its Alternate III in solicitations issued by Federal agencies subject to the requirements of the HUBZone Act of 1997 (see 19.1302);

\* \* \* \* \*

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

9. Section 13.003 is amended by redesignating paragraph (b)(2) as (b)(3) and adding a new paragraph (b)(2) to read as follows:

**13.003 Policy.**

\* \* \* \* \*

(b) \* \* \*

(2) The contracting officer may set aside for HUBZone small business concerns (see 19.1305) an acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding the simplified acquisition threshold. The contracting officer's decision not to set aside an acquisition for HUBZone participation below the simplified acquisition threshold is not subject to review under subpart 19.4.

\* \* \* \* \*

10. Section 13.005 is amended by adding paragraph (a)(9) to read as follows:

**13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.**

(a) \* \* \*

(9) 15 U.S.C. 631 note (HUBZone Act of 1997), except for 15 U.S.C. 657a(b)(2)(B), which is optional for the agencies subject to the requirements of the Act.

\* \* \* \* \*

**PART 14—SEALED BIDDING**

**14.206 [Reserved]**

11. Section 14.206 is removed and reserved.

12. Section 14.502 is amended by redesignating paragraph (b)(5) as (b)(6) and adding a new paragraph (b)(5) to read as follows:

**14.502 Conditions for use.**

\* \* \* \* \*

(b) \* \* \*

(5) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see subpart 19.13).

\* \* \* \* \*

**PART 15—CONTRACTING BY NEGOTIATION**

13. Section 15.503 is amended by revising paragraph (a)(2) to read as follows:

**15.503 Notifications to unsuccessful offerors.**

(a) \* \* \*

(2) *Preward notices for small business programs*. (i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award, upon completion of negotiations, determinations of responsibility, and, if necessary, the process in 19.304(d)—

(A) When using a small business set-aside (see subpart 19.5);

(B) When a small disadvantaged business concern receives a benefit based on its disadvantaged status (see subpart 19.11 and 19.1202) and is the apparently successful offeror; or

(C) When using the HUBZone procedures in 19.1305 or 19.1307.

(ii) The notice shall state—

(A) The name and address of the apparently successful offeror;

(B) That the Government will not consider subsequent revisions of the offeror's proposal; and

(C) That no response is required unless a basis exists to challenge the small business size status, disadvantaged status, or HUBZone status of the apparently successful offeror.

(iii) The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered

into under the 8(a) program (see 19.805-2).

\* \* \* \* \*

**PART 19—SMALL BUSINESS PROGRAMS**

14. Section 19.000 is amended by revising paragraphs (a)(3) and (a)(8) to read as follows:

**19.000 Scope of part.**

(a) \* \* \*

(3) Setting acquisitions aside for exclusive competitive participation by small business concerns and HUBZone small business concerns, and sole source awards to HUBZone small business concerns;

\* \* \* \* \*

(8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns; and

\* \* \* \* \*

15. Section 19.001 is amended by adding, in alphabetical order, the definitions "HUBZone" and "HUBZone small business concern" to read as follows:

**19.001 Definitions.**

\* \* \* \* \*

*HUBZone* means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

*HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA.

\* \* \* \* \*

16. Section 19.201 is amended by revising the first sentence of paragraph (a); in paragraph (c) by removing the words "small, small disadvantaged and women-owned"; and revising paragraphs (d)(4), (d)(6), (d)(7)(ii), (d)(8), and (d)(9) to read as follows:

**19.201 General policy.**

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

\* \* \* \* \*

(d) \* \* \*

(4) Be responsible for the agency carrying out the functions and duties in

sections 8, 15, and 31 of the Small Business Act.

\* \* \* \* \*

(6) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15, and 31 of the Small Business Act.

(7) \* \* \*

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8, 15, and 31 of the Small Business Act;

(8) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8, 15, and 31 of the Small Business Act;

(9) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart 19.5 as a small business set-aside, under subpart 19.8 as a Section 8(a) award, or under subpart 19.13 as a HUBZone set-aside.

\* \* \* \* \*

**19.202 [Amended]**

17. Section 19.202 is amended in the first sentence by removing "Subpart 19.5 or 19.8" and adding "subpart 19.5, 19.8, or 19.13."

18. Section 19.202-2 is amended by revising the introductory paragraph; and in paragraph (a) by adding "and HUBZones" after the word "areas". The revised text reads as follows:

**19.202-2 Locating small business sources.**

The contracting officer shall, to the extent practicable, encourage maximum participation by small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in acquisitions by taking the following actions:

\* \* \* \* \*

19. Section 19.202-4 is amended by revising the introductory paragraph to read as follows:

**19.202-4 Solicitation.**

The contracting officer shall encourage maximum response to solicitations by small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by taking the following actions:

\* \* \* \* \*

20. Section 19.202-5 is amended by revising paragraphs (a) and (b) to read as follows:

**19.202-5 Data collection and reporting requirements.**

\* \* \* \* \*

(a) Require each prospective contractor to represent whether it is a small business, HUBZone small business, small disadvantaged business, or women-owned small business concern (see the provision at 52.219-1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see subpart 4.6).

21. Section 19.202-6 is amended by removing the introductory text and revising paragraph (a) to read as follows:

**19.202-6 Determination of fair market price.**

(a) The fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404-1(b) for—

(1) Total and partial small business set-asides (see subpart 19.5);

(2) HUBZone set-asides (see subpart 19.13);

(3) Contracts utilizing the price evaluation adjustment for small disadvantaged business concerns (see subpart 19.11); and

(4) Contracts utilizing the price evaluation preference for HUBZone small business concerns (see subpart 19.13).

\* \* \* \* \*

**Subpart 19.3—Determination of Status as a Small Business, HUBZone Small Business, or Small Disadvantaged Business Concern**

22. The heading of Subpart 19.3 is revised to read as set forth above.

23. Section 19.301 is amended by revising the first sentence of paragraph (d) to read as follows:

**19.301 Representation by the offeror.**

\* \* \* \* \*

(d) If the SBA determines that the status of a concern as a small business, HUBZone small business, small disadvantaged business, or women-owned small business has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of

Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Section 16(d) of the Act. \* \* \*

24. Section 19.306 is redesignated as 19.307; and a new 19.306 is added to read as follows:

**19.306 Protesting a firm's status as a HUBZone small business concern.**

(a) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone small business status. For all other acquisitions, an offeror, the contracting officer, or the SBA may protest the apparently successful offeror's HUBZone small business concern status.

(b) Protests relating to whether a HUBZone small business concern is a small business for purposes of any Federal program are subject to the procedures of subpart 19.3. Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

(c) All protests shall be in writing and shall state all specific grounds for the protest. Assertions that a protested concern is not a HUBZone small business concern, without setting forth specific facts or allegations, is insufficient. An offeror shall submit its protest to the contracting officer. The contracting officer and the SBA shall submit their protests to SBA's Associate Administrator for the HUBZone Program (AA/HUB).

(d) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(e) Except for premature protests, the contracting officer shall forward any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely, to: AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

(f) SBA will determine the HUBZone status of the protested HUBZone small business concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the

apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(g) 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 Associate Deputy Administrator for Government Contracting and 8(a) Business Development (ADA/GC&8(a)BD).

(h) The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's ADA/GC&8(a)BD. The ADA/GC&8(a)BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the 5-day period.

(i) The appeal must be in writing. The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the AA/HUB failed to consider.

(j) The party appealing the decision must provide notice of the appeal to the contracting officer and either the protested HUBZone small business concern or the original protester, as appropriate. SBA will not consider additional information or changed circumstances that were not disclosed at the time of the AA/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(k) The ADA/GC&8(a)BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The ADA/GC&8(a)BD's decision is the final decision.

24a. In newly redesignated 19.307, the section heading and paragraph (a) are revised to read as follows:

**19.307 Solicitation provision.**

(a)(1) The contracting officer shall insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United

States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(2) The provision shall be used with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a).

(3)(i) The provision shall be used with its Alternate II in solicitations issued by the following agencies on or before September 30, 2000:

- (A) Department of Agriculture.
- (B) Department of Defense.
- (C) Department of Energy.
- (D) Department of Health and Human Services.
- (E) Department of Housing and Urban Development.
- (F) Department of Transportation.
- (G) Department of Veterans Affairs.
- (H) Environmental Protection Agency.
- (I) General Services Administration.
- (J) National Aeronautics and Space Administration.

(ii) The provision shall be used with its Alternate II in solicitations issued by all Federal agencies after September 30, 2000.

\* \* \* \* \*

25. Section 19.402 is amended by revising paragraph (c)(1) to read as follows:

**19.402 Small Business Administration procurement center representatives.**

\* \* \* \* \*

(c) \* \* \*

(1) Reviewing proposed acquisitions to recommend—

(i) The setting aside of selected acquisitions not unilaterally set aside by the contracting officer.

(ii) New qualified small, HUBZone small, small disadvantaged, and women-owned small business sources, and

(iii) Breakout of components for competitive acquisitions.

\* \* \* \* \*

26. Section 19.501 is amended—

(a) In the third and fourth sentences of paragraph (a) by adding "small business" after the word "A" in each instance;

(b) In the first sentence of paragraph (b) by adding "small business" after the word "a"; and in the second and third sentences by removing the word "which" and adding "that" in each instance; and

(c) By redesignating paragraphs (c) through (g) as (d) through (h), respectively; adding a new paragraph (c); and by revising newly designated paragraphs (d) and (h) to read as follows:

**19.501 General.**

\* \* \* \* \*

(c) For acquisitions exceeding the simplified acquisition threshold, the requirement to set aside an acquisition for HUBZone small business concerns (see 19.1305) takes priority over the requirement to set aside the acquisition for small business concerns.

(d) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency's small business programs. The contracting officer shall document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless a HUBZone small business set-aside or HUBZone small business sole source award is anticipated. If the acquisition is set aside for small business based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.

\* \* \* \* \*

(h) Except as authorized by law, a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price.

27. Section 19.502-1 is revised to read as follows:

**19.502-1 Requirements for setting aside acquisitions.**

(a) The contracting officer shall set aside an individual acquisition or class of acquisitions for competition among small businesses when—

(1) It is determined to be in the interest of maintaining or mobilizing the Nation's full productive capacity, war or national defense programs; or

(2) Assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns; and the circumstances described in 19.502-2 or 19.502-3(a) exist.

(b) This requirement does not apply to purchases of \$2,500 or less, or purchases from required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

28. Section 19.502-2 is amended by revising the section heading; in the first sentence of paragraph (a) by adding "for small business" after the word "aside"; and revising the last sentence; in the first sentence of paragraph (c) by adding "small business" after the word "For", and removing the word "which" and

adding "that"; and in paragraph (d) by adding "small business" after the word "when". The revised text reads as follows:

**19.502-2 Total small business set-asides.**

(a) \* \* \* The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under Subpart 19.8, Contracting with the Small Business Administration, under 19.1006(c), Emerging small business set-aside, or under 19.1305, HUBZone set-aside procedures.

\* \* \* \* \*

**19.502-4 [Amended]**

29. Section 19.502-4 is amended in the first sentence of paragraph (a) by adding "small business" after the word "Total".

**19.502-5 [Amended]**

30. Section 19.502-5 is amended in the second sentences of paragraphs (b) and (c) by adding "small business" after the word "total" in each instance; and in paragraph (g) by adding "small business" after the word "class".

31. Section 19.503 is amended by revising the section heading to read as set forth below; in the second sentence of paragraph (a) by adding "small business" after the word "class"; in paragraph (b) by adding "for small business" after the word "acquisitions"; in paragraph (c) introductory text by adding "small business" after the word "class"; and in the first sentence of paragraph (d) by adding "small business" after the word "class" both times it appears.

**19.503 Setting aside a class of acquisitions for small business.**

32. Section 19.506 is amended by revising the section heading, paragraph (a), the last sentence of paragraph (b), and paragraph (c) to read as follows:

**19.506 Withdrawing or modifying small business set-asides.**

(a) If, before award of a contract involving a small business set-aside, the contracting officer considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the small business set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual small business set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class

small business set-aside to withdraw one or more individual acquisitions.

(b) \* \* \* However, the procedures are not applicable to automatic dissolutions of small business set-asides (see 19.507) or dissolution of small business set-asides under \$100,000.

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a small business set-aside and include it in the contract file.

33. Section 19.507 is amended by revising the section heading to read as set forth below; and in the first sentence of paragraph (a) by adding "small business" after the word "a".

**19.507 Automatic dissolution of a small business set-aside.****Subpart 19.7—The Small Business Subcontracting Program**

34. The heading of Subpart 19.7 is revised to read as set forth above.

35. Section 19.702 is amended by revising the introductory paragraph and (b)(4) to read as follows:

**19.702 Statutory requirements.**

Any contractor receiving a contract for more than the simplified acquisition threshold shall agree in the contract that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

\* \* \* \* \*

(b) \* \* \*

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8, Utilization of Small Business Concerns (or equivalent prior clauses; e.g., contracts awarded before the enactment of Public Law 95-507).

\* \* \* \* \*

36. Section 19.703 is amended by revising the introductory text of paragraph (a) and (a)(1); in paragraph (b) by revising the first sentence and adding a sentence to the end of the paragraph to read as follows:

**19.703 Eligibility requirements for participating in the program.**

(a) To be eligible as a subcontractor under the program, a concern must



represent itself as a small business, HUBZone small business, small disadvantaged business, or woman-owned small business concern.

(1) To represent itself as a small business, HUBZone small business, or women-owned small business concern, a concern must meet the appropriate definition in 19.001.

\* \* \* \* \*

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, HUBZone small business, or women-owned small business concern. \* \* \* Protests challenging HUBZone small business concern status shall be filed in accordance with 13 CFR 126.800.

37. Section 19.704 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(6), (a)(8), (a)(9), (a)(11), and the first sentence of paragraph (b) to read as follows:

**19.704 Subcontracting plan requirements.**

(a) \* \* \*

(1) Separate percentage goals for using small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors;

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

\* \* \* \* \*

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

\* \* \* \* \*

(8) A description of the efforts the offeror will make to ensure that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts;

(9) Assurances that the offeror will include the clause at 52.219-8,

Utilization of Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan (see 19.708(b));

\* \* \* \* \*

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see 19.701) that contains all the elements required by the clause at 52.219-9, Small Business Subcontracting Plan, except goals. \* \* \*

\* \* \* \* \*

38. Section 19.705-2 is amended by revising the last sentence of paragraph (d) to read as follows:

**19.705-2 Determining the need for a subcontracting plan.**

\* \* \* \* \*

(d) \* \* \* In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns to participate, and the burden placed on offerors.

39. Section 19.705-4 is amended by revising the last sentence of paragraph (b), the second and last sentences of paragraph (c), the first sentence of paragraph (d)(1), (d)(5), and the first sentence of paragraph (d)(6) to read as follows:

**19.705-4 Reviewing the subcontracting plan.**

\* \* \* \* \*

(b) \* \* \* If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small Business Concerns, the contracting officer may find the bidder nonresponsive.

(c) \* \* \* Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors to the maximum practicable extent. \* \* \* An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small business, HUBZone small business, or women-owned small business concerns.

(d) \* \* \*

(1) Obtain information available from the cognizant contract administration office, as provided for in 19.706(a), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. \* \* \*

\* \* \* \* \*

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(6) Advise the offeror of available sources of information on potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. \* \* \*

\* \* \* \* \*

40. Section 19.705-6 is amended by revising paragraphs (a) and (b) to read as follows:

**19.705-6 Postaward responsibilities of the contracting officer.**

\* \* \* \* \*

(a) Notifying the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA area office where the contract will be performed.

(b) Forwarding a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA

area office where the contractor's headquarters is located.

\* \* \* \* \*

41. Section 19.705-7 is amended in the first sentence of paragraph (a), and in the third and fourth sentences of paragraph (d) by removing the words "small, small disadvantaged" and adding "small business, HUBZone small business, small disadvantaged business," in each instance; and revising the introductory text of paragraph (f) to read as follows:

**19.705-7 Liquidated damages.**

\* \* \* \* \*

(f) With respect to commercial plans approved under the clause at 52.219-9, Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

\* \* \* \* \*

42. Section 19.706 is amended by revising paragraphs (b) and (c) to read as follows:

**19.706 Responsibilities of the cognizant administrative contracting officer.**

\* \* \* \* \*

(b) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

(c) Information on whether the contractor's efforts to ensure the participation of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns are in accordance with its subcontracting plan;

\* \* \* \* \*

43. Section 19.708 is amended by revising the section heading; in the introductory text of paragraph (a) by removing the words "Small, Small Disadvantaged and Women-Owned"; by revising paragraph (b); and in paragraphs (c)(1), (c)(2), and (c)(3) by adding "business, HUBZone small business," after the word "small" the first time it is used. The revised text reads as follows:

**19.708 Contract clauses.**

\* \* \* \* \*

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns, unless the acquisition is set aside or is

to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I. When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small Business Subcontracting Plan, or the clause with its Alternate I or II.

\* \* \* \* \*

44. Section 19.800 is amended by adding paragraph (d) to read as follows:

**19.800 General.**

\* \* \* \* \*

(d) Before deciding to set aside an acquisition in accordance with subpart 19.5 or 19.13, the contracting officer should review the acquisition for offering under the 8(a) Program. In making this decision, contracting officers in participating agencies (see 19.1302) are advised that SBA will give first priority to HUBZone 8(a) concerns.

**19.803 [Amended]**

45. Section 19.803 is amended at the end of paragraph (c) by removing the period and adding "(but see 19.800(d))."

46. Section 19.804-2 is amended by revising paragraph (a)(12) to read as follows:

**19.804-2 Agency offering.**

(a) \* \* \* (12) Identification of all known 8(a) concerns, including HUBZone 8(a) concerns, that have expressed an interest in this specific requirement as a result of self-marketing, response to sources sought, or publication of advanced acquisition requirements.

\* \* \* \* \*

47. Section 19.1006 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

**19.1006 Procedures.**

\* \* \* \* \*

(b) *Designated industry groups.* (1) \* \* \* Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) Program (see subpart 19.8) and the HUBZone Program (see subpart 19.13).

\* \* \* \* \*

48. Section 19.1102 is amended by revising paragraph (b) to read as follows:

**19.1102 Applicability.**

\* \* \* \* \*

(b) The price evaluation adjustment shall not be used in acquisitions that—

- (1) Are less than or equal to the simplified acquisition threshold;
- (2) Are awarded pursuant to the 8(a) Program;
- (3) Are set aside for small business concerns; or
- (4) Are set aside for HUBZone small business concerns.

49. Section 19.1202-2 is amended by revising paragraph (b)(1) to read as follows:

**19.1202-2 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(1) Small business set-asides (see subpart 19.5) and HUBZone set-asides (see subpart 19.13);

\* \* \* \* \*

50. Subpart 19.13, consisting of sections 19.1301 through 19.1308, is added to read as follows:

**Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program**

Sec.

- 19.1301 General.
- 19.1302 Applicability.
- 19.1303 Status as a qualified HUBZone small business concern.
- 19.1304 Exclusions.
- 19.1305 HUBZone set-aside procedures.
- 19.1306 HUBZone sole source awards.
- 19.1307 Price evaluation preference for HUBZone small business concerns.
- 19.1308 Contract clauses.

**Authority:** 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program**

**19.1301 General.**

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the "HUBZone Empowerment Contracting Program").

(b) The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

**19.1302 Applicability.**

(a) Until September 30, 2000, the procedures in this subpart apply only to acquisitions made by the following Federal agencies:

- (1) Department of Agriculture.
- (2) Department of Defense.

- (3) Department of Energy.
- (4) Department of Health and Human Services.
- (5) Department of Housing and Urban Development.
- (6) Department of Transportation.
- (7) Department of Veterans Affairs.
- (8) Environmental Protection Agency.
- (9) General Services Administration.
- (10) National Aeronautics and Space Administration.

(b) On or after September 30, 2000, the procedures in this subpart will apply to all Federal agencies that employ one or more contracting officers.

#### **19.1303 Status as a qualified HUBZone small business concern.**

(a) Status as a qualified HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR part 126.

(b) If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at <http://www.sba.gov/hubzone>. The concern must appear on the list to be a HUBZone small business concern.

(c) A joint venture (see 19.101) may be considered a HUBZone small business if the business entity meets all the criteria in 13 CFR 126.616.

(d) Except for construction or services, any HUBZone small business concern (nonmanufacturer) proposing to furnish a product that it did not itself manufacture must furnish the product of a HUBZone small business concern manufacturer to receive a benefit under this subpart.

#### **19.1304 Exclusions.**

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see subpart 8.6); or

(2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see subpart 8.7);

(b) Orders under indefinite delivery contracts (see subpart 16.5);

(c) Orders against Federal Supply Schedules (see subpart 8.4);

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(e) Requirements that do not exceed the micro-purchase threshold; or

(f) Requirements for commissary or exchange resale items.

#### **19.1305 HUBZone set-aside procedures.**

(a) A participating agency contracting officer shall set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306) or small business set-asides (see subpart 19.5).

(b) To set aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

(c) A participating agency may set aside acquisitions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

(d) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see subpart 19.5).

(e) The procedures at 19.202-1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section. When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and

compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

#### **19.1306 HUBZone sole source awards.**

(a) A participating agency contracting officer may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides (see subpart 19.5), provided—

(1) Only one HUBZone small business concern can satisfy the requirement;

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

(i) \$5,000,000 for a requirement within the Standard Industrial Classification (SIC) codes for manufacturing; or

(ii) \$3,000,000 for a requirement within any other SIC code;

(3) The requirement is not currently being performed by a non-HUBZone small business concern;

(4) The acquisition is greater than the simplified acquisition threshold (see part 13);

(5) The HUBZone small business concern has been determined to be a responsible contractor with respect to performance; and

(6) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a HUBZone sole source award.

#### **19.1307 Price evaluation preference for HUBZone small business concerns.**

(a) The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used—

(1) In acquisitions expected to be less than or equal to the simplified acquisition threshold;

(2) Where price is not a selection factor so that a price evaluation preference would not be considered (e.g., Architect/Engineer acquisitions);

(3) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).

(b) The contracting officer shall give offers from HUBZone small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except—

(1) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(2) Otherwise successful offers from small business concerns;

(3) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.402; and

(4) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government (see agency supplement).

(c) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors, such as transportation costs or rent-free use of Government facilities, shall be added to the offer to establish the base offer before adding the factor of 10 percent.

(d) A concern that is both a HUBZone small business concern and a small disadvantaged business concern shall receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see subpart 19.11). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference and adjustment amounts shall both be added to the base offer to arrive at the total evaluated price for that offer.

**19.1308 Contract clauses.**

(a) The contracting officer shall insert the clause 52.219-3, Notice of Total HUBZone Set-Aside, in solicitations and contracts for acquisitions that are set aside for HUBZone small business concerns under 19.1305 or 19.1306.

(b) The contracting officer shall insert the clause at 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition. The clause shall not be used in acquisitions that do not exceed the simplified acquisition threshold.

**PART 26—OTHER SOCIOECONOMIC PROGRAMS**

**26.104 [Amended]**

51. Section 26.104 is amended in paragraph (a) by removing the words "Small, Small Disadvantaged and Women-Owned".

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

52. Section 52.212-3 is amended by adding Alternate III following Alternate II to read as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*  
 Alternate III (Jan 1999). As prescribed in 12.301(b)(2), add the following paragraph (c)(9) to the basic provision:

(9) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that—  
 (i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and  
 (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(9)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:* \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

53. Section 52.212-5 is amended in the clause by revising (b)(3) and (b)(4); redesignating (b)(9) through (b)(20) as (b)(12) through (b)(23), respectively; and adding new paragraphs (b)(9), (b)(10), and (b)(11) to read as follows:

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Commercial Items.**

\* \* \* \* \*  
 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jan. 1999)  
 \* \* \* \* \*

(b) \* \* \*  
 (3) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

(4) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4)).

\* \* \* \* \*  
 (9) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999).

(10) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

(11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

\* \* \* \* \*  
 54. Section 52.219-1 is amended by revising the introductory paragraph; in the introductory text of Alternate I by revising "19.306(a)(1)" to read "19.307(a)(1)"; and adding Alternate II following Alternate I to read as follows:

**52.219-1 Small Business Program Representations.**

As prescribed in 19.307(a)(1), insert the following provision:

\* \* \* \* \*  
 Alternate II (Jan 1999). As prescribed in 19.307(a)(3), add the following paragraph (b)(5) to the basic provision:

(5) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—  
 (i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and  
 (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:* \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

**52.219-2 [Amended]**

55. Section 52.219-2 is amended in the introductory text by revising "19.306(c)" to read "19.307(c)".

56. Sections 52.219-3 and 52.219-4 are added to read as follows:

**52.219-3 Notice of total HUBZone set-aside.**

As prescribed in 19.1308(a), insert the following clause:

Notice of Total HUBZone Set-Aside (Jan 1999)

(a) *Definition.* HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause will be performed by the HUBZone small business participant or participants.

(e) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

**52.219-4 Notice of price evaluation preference for HUBZone small business concerns.**

As prescribed in 19.1308(b), insert the following clause:

Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999)

(a) *Definition.* *HUBZone small business concern*, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other

evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

□ Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

57. Section 52.219-8 is revised to read as follows:

**52.219-8 Utilization of small business concerns.**

As prescribed in 19.708(a), insert the following clause:

Utilization of Small Business Concerns (Jan 1999)

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract

(1) *Small business concern* means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) *HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) *Small business concern owned and controlled by socially and economically disadvantaged individuals* means an offeror that represents, as part of its offer, that—

(i) It is a small business under the size standard applicable to the acquisition;

(ii) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(iii) No material change in disadvantaged ownership and control has occurred since its certification;

(iv) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(v) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration.

(4) *Small business concern owned and controlled by women* means a small business concern—

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women; and

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.  
(End of clause)

58. Section 52.219-9 is amended—

a. By revising the section and clause headings;

b. By revising the first and second sentences of paragraph (c);

c. By revising the first sentence of paragraph (d)(1);

d. By redesignating (d)(2)(iii) and (d)(2)(iv) as (d)(2)(iv) and (d)(2)(v) and adding a new (d)(2)(iii);

e. By revising paragraph (d)(3);

f. In the first sentence of paragraph (d)(5) by adding "HUBZone small," after the words "or small,";

g. By revising paragraph (d)(6);

h. In paragraph (d)(8) by adding "business, HUBZone small business," after the words "that small"; and adding "business," after "small disadvantaged";

i. In paragraph (d)(9) by removing the word "in" the first time it is used and adding "of" in its place; and removing the words "Small, Small Disadvantaged and Women-Owned";

j. By revising paragraph (d)(11);

k. By revising paragraphs (e)(1), (e)(2), (e)(3), and (e)(4);

l. In paragraph (i)(1) by removing the words "Small, Small Disadvantaged and Women-Owned"; and

m. By revising Alternates I and II to read as follows:

**52.219-9 Small business subcontracting plan.**

\* \* \* \* \*

Small Business Subcontracting Plan (Jan 1999)

\* \* \* \* \*

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). \* \* \*

(d) \* \* \*

(1) Goals, expressed in terms of percentages of total planned subcontracting

dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors.

\* \* \*

(2) \* \* \*

(iii) Total dollars planned to be subcontracted to HUBZone small business concerns;

\* \* \* \* \*

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

\* \* \* \* \*

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

\* \* \* \* \*

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether HUBZone small business concerns were solicited and, if not, why not;

(C) Whether small disadvantaged business concerns were solicited and, if not, why not;

(D) Whether women-owned small business concerns were solicited and, if not, why not; and

(E) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through—  
(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) \* \* \*

(1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

\* \* \* \* \*

*Alternate I (Jan 1999).* When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make

the bidder ineligible for the award of a contract.

*Alternate II (Jan 1999).* As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

59. Section 52.219-10 is amended by revising paragraph (a) of the clause; and in the first sentence of paragraph (b) by removing "concerns" the first time it is used and adding "HUBZone small

business," in its place. The revised text reads as follows:

**52.219-10 Incentive Subcontracting Program.**

\* \* \* \* \*

Incentive Subcontracting Program (Jan 1999)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

\* \* \* \* \*

**52.219-16 [Amended]**

60. Section 52.219-16 is amended by revising the date of the clause to read "(JAN 1999)"; and in paragraph (a) and the second sentence of paragraph (b) of the clause by removing the words "Small, Small Disadvantaged and Women-Owned".

**52.219-22 [Amended]**

61. Section 52.219-22 is amended in the introductory paragraph by revising "19.306(b)" to read "19.307(b)".

**52.226-1 [Amended]**

62. Section 52.226-1 is amended by revising the date of the clause to read "(JAN 1999)"; and in paragraph (a) of the clause by removing the words "Small, Small Disadvantaged and Women-Owned".

**PART 53—FORMS**

63. Section 53.219 is amended by revising paragraph (a); and in paragraph (b) by revising the revision date of the form to read "(Rev. 12/98)".

**53.219 Small business programs.**

\* \* \* \* \*

(a) *SF 294 (Rev. 12/98), Subcontracting Report for Individual Contracts.* (See 19.704(a)(10).) SF 294 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the loose-leaf edition of the FAR.

\* \* \* \* \*

64. Sections 53.301-294 and 53.301-295 are revised to read as follows:

**53.301-294 Subcontracting Report for Individual Contracts.**

BILLING CODE 6820-EP-P

**SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS**  
*(See instructions on reverse)*

 OMB No.: 9000-0006  
 Expires: 04/30/2001

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30    YEAR		
b. STREET ADDRESS					
c. CITY	d. STATE	e. ZIP CODE	5. TYPE OF REPORT		
2. CONTRACTOR IDENTIFICATION NUMBER			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>					
<input type="checkbox"/> ARMY		<input type="checkbox"/> GSA		<input type="checkbox"/> NASA	
<input type="checkbox"/> NAVY		<input type="checkbox"/> DOE		<input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i>	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> DEFENSE LOGISTICS AGENCY			
7. REPORT SUBMITTED AS <i>(Check one and provide appropriate number)</i>			8. AGENCY OR CONTRACTOR AWARDING CONTRACT		
<input type="checkbox"/> PRIME CONTRACTOR			a. AGENCY'S OR CONTRACTOR'S NAME		
<input type="checkbox"/> SUBCONTRACTOR			b. STREET ADDRESS		
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS: <input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS			c. CITY		e. ZIP CODE
			d. STATE		

**SUBCONTRACT AWARDS**

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB) (Dollar Amount and Percent of 10c.)</i>				
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
10c. TOTAL <i>(Sum of 10a and 10b.)</i>		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS <i>(Include HBCU/MI) (Dollar Amount and Percent of 10c.)</i>				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable) (Dollar Amount and Percent of 10c.)</i>				
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				

15. REMARKS

16a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

16b. TELEPHONE NUMBER

AREA CODE    NUMBER

 AUTHORIZED FOR LOCAL REPRODUCTION  
 Previous edition is not usable

 STANDARD FORM 294 (REV. 12-98)  
 Prescribed by GSA-FAR (48 CFR) 53.219(a)



**GENERAL INSTRUCTIONS**

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

**SPECIFIC INSTRUCTIONS**

**BLOCK 2:** For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

**BLOCK 4:** Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

**BLOCK 5:** Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

**BLOCK 6:** Identify the department or agency administering the majority of subcontracting plans.

**BLOCK 7:** Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

**BLOCK 8:** Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

**BLOCK 9:** Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

**BLOCKS 10a through 14:** Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract

modifications, enter the original goals in Block 15. The amounts entered in Blocks 10a through 14 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

**BLOCK 10a:** Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

**BLOCK 10b:** Report all subcontracts awarded to large businesses (LBs).

**BLOCK 10c:** Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

**BLOCKS 11 through 14:** Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women).

**BLOCK 11:** Report all subcontracts awarded to SDBs (including women-owned and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

**BLOCK 12:** Report all subcontracts awarded to Women-Owned firms (including SDBs and HUBZone SBs owned by women).

**BLOCK 13 (For contracts with DoD, NASA, and Coast Guard):** Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

**BLOCK 14:** Report all subcontracts awarded to HUBZone SBs (including women-owned and SDB HUBZone SBs).

**BLOCK 15:** Enter a short narrative explanation if (a) SB, SDB, WOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

**DEFINITIONS**

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.

2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

**DISTRIBUTION OF THIS REPORT****For the Awarding Agency or Contractor:**

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

**For the Small Business Administration (SBA):**

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is **NOT** necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

53.301-295 Summary Subcontract Report.

<b>SUMMARY SUBCONTRACT REPORT</b> <i>(See instructions on reverse)</i>				OMB No.: 9000-0007 Expires: 06/30/2000	
Public reporting burden for this collection of information is estimated to average 12.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.					
1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD: YEAR		
b. STREET ADDRESS					
c. CITY		d. STATE	e. ZIP CODE	<input type="checkbox"/> OCT 1 - MAR 31 <input type="checkbox"/> OCT 1 - SEPT 30	
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT		
			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>					
<input type="checkbox"/> ARMY		<input type="checkbox"/> DEFENSE LOGISTICS AGENCY		<input type="checkbox"/> DOE	
<input type="checkbox"/> NAVY		<input type="checkbox"/> NASA		<input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i>	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> GSA			
7. REPORT SUBMITTED AS <i>(Check one)</i>			8. TYPE OF PLAN		
<input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> BOTH			<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> COMMERCIAL		
<input type="checkbox"/> SUBCONTRACTOR			IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. <span style="font-size: 2em;">▶</span>		
9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES					
a		c			
b		d			
<b>CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS</b> <i>(Report cumulative figures for reporting period in Block 4)</i>					
TYPE			WHOLE DOLLARS	PERCENT (To nearest tenth of a %)	
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB)</i> <i>(Dollar Amount and Percent of 10c.)</i>					
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
10c. TOTAL <i>(Sum of 10a and 10b.)</i>				100.0%	
11. SMALL DISADVANTAGED (SDB) CONCERNS <i>(Include HBCU/MI)</i> <i>(Dollar Amount and Percent of 10c.)</i>					
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable)</i> <i>(Dollar Amount and Percent of 10c.)</i>					
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>					
15. REMARKS					
16. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM					
a. NAME		b. TITLE		c. TELEPHONE NUMBER	
				AREA CODE	NUMBER
17. CHIEF EXECUTIVE OFFICER					
a. NAME			c. SIGNATURE		
b. TITLE			d. DATE		

## GENERAL INSTRUCTIONS

1. This report is not required from small businesses.
2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.
5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)
6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.
8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.
10. See special instructions in right-hand column for Commercial Plans.

## SPECIFIC INSTRUCTIONS

**BLOCK 2:** For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

**BLOCK 4:** Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

**BLOCK 5:** Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

**BLOCK 6:** Identify the department or agency administering the majority of subcontracting plans.

**BLOCK 7:** This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

**BLOCK 8:** Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 14 attributable to the agency to which this report is being submitted.

**BLOCK 9:** Identify the major product or service lines of the reporting organization.

**BLOCKS 10a through 14:** These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

**BLOCK 10a:** Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

**BLOCK 10b:** Report all subcontracts awarded to large businesses (LBs).

**BLOCK 10c:** Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

**BLOCKS 11 and 14:** Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

**BLOCK 11:** Report all subcontracts awarded to SDBs (including women-owned and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

**BLOCK 12:** Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs and HUBZone SBs owned by women).

**BLOCK 13 (For contracts with DOD, NASA, and Coast Guard):** Enter the dollar value of all subcontracts with HBCUs/MIs.

**BLOCK 14:** Report all subcontracts awarded to HUBZone SBs (including women-owned and SDB HUBZone SBs).

## SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.
2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.
3. Enter in Blocks 10a through 14 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

## DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.
2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.
4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
5. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

## SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

## FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 12-98) BACK

**DEPARTMENT OF DEFENSE**

**General Services Administration**

**National Aeronautics and Space Administration**

**48 CFR Part 16**

[FAC 97-10; FAR Case 98-016; Item II]

RIN 9000-A118

**Federal Acquisition Regulation; Limits for Indefinite-Quantity Contracts**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify guidance regarding how limits on indefinite-quantity contracts are expressed.

**EFFECTIVE DATE:** February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-10, FAR case 98-016.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends FAR 16.504(a) to clarify that maximum and minimum limits for indefinite-quantity contracts may be expressed as a number of units or dollar value.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-10, FAR case 98-016), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 16**

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR part 16 is amended as set forth below:

**PART 16—TYPES OF CONTRACTS**

1. The authority citation for 48 CFR part 16 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 16.504 is amended at the end of paragraph (a) by adding a sentence; in paragraph (a)(1) by revising the first sentence and adding a new second sentence; and by revising paragraph (a)(4)(ii). The revised text reads as follows:

**16.504 Indefinite-quantity contracts.**

(a) \* \* \* Quantity limits may be expressed in terms of numbers of units or as dollar values.

(1) The contract shall require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor shall furnish any additional quantities, not to exceed the stated maximum. \* \* \*

\* \* \* \* \*

(4) \* \* \*

(ii) Specify the total minimum and maximum quantity of supplies or services to be acquired under the contract;

\* \* \* \* \*

[FR Doc. 98-33514 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**General Services Administration**

**National Aeronautics and Space Administration**

**48 CFR Parts 22 and 52**

[FAC 97-10; FAR Case 98-607; Item III]

RIN 9000-A115

**Federal Acquisition Regulation; Office of Federal Contract Compliance Programs National Pre-Award Registry**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to inform the procurement community of the availability of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) National Pre-Award Registry (Registry), accessible through the Internet, that contains contractor establishments that have been reviewed within the preceding 24 months and found in compliance with the equal opportunity laws enforced by OFCCP, and the option to use the information in the Registry in lieu of submitting a written request for a preaward clearance; and implement revised Department of Labor (DoL) regulations pertaining to equal employment opportunity and affirmative action requirements for Federal contractors and subcontractors.

**EFFECTIVE DATE:** February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAC 97-10, FAR case 98-607.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 60-1.29 of Title 41 of the Code of Federal Regulations provides that agencies shall not enter into contracts or approve the entry into contracts or subcontracts for \$10 million or more with any bidder, prospective prime contractor, or proposed subcontractor until a preaward compliance evaluation has been conducted and the Deputy Assistant

Secretary or his designee has approved a determination that the bidder, prospective prime contractor, or proposed subcontractor will be able to comply with the provisions of the equal employment opportunity regulations.

To streamline the process for obtaining preaward clearance, the Office of Federal Contract Compliance Programs (OFCCP) has developed and implemented the OFCCP National Pre-Award Registry which contains contractor establishments that have been evaluated within the past 24 months and found to be in compliance with its Equal Employment Opportunity regulations.

Since April 15, 1998, agencies who have inquired have been verbally advised by OFCCP that they may review the Registry to search for prospective contractor establishments to whom they intend to award contracts of \$10 million or more. If the specific contractor establishment receiving the contract is listed on the Registry, the agency is not required to request a written preaward clearance from OFCCP. The use of the Registry will reduce the number of requests from the contracting agencies to OFCCP and responses back from OFCCP to the agency. Thus, use of the Registry will reduce the administrative burden of paperwork for both agencies.

Also, this final rule amends FAR subpart 22.8 and the provisions and clauses at FAR 52.212-3, 52.222-21 through 52.222-24, and 52.222-26 through 52.222-29, to implement revised Department of Labor (DoL) regulations, published as a final rule in the **Federal Register** at 62 FR 44173, August 19, 1997. The DoL rule increased, from \$1 million to \$10 million, the threshold for obtaining preaward compliance clearance from OFCCP, and amended administrative procedures for obtaining such clearances; eliminated the requirement for OFCCP clearance of subcontracts after award of the prime contract; and eliminated the requirement to obtain a certification of nonsegregated facilities from prospective contractors.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5

U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-10, FAR case 98-607), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 22 and 52

Government procurement.

Dated: December 14, 1998.

### Ralph DeStefano,

*Acting Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### 22.800 [Amended]

2. Section 22.800 is amended by removing "Government."

3. Section 22.801 is revised to read as follows:

### 22.801 Definitions.

As used in this subpart—  
*Affirmative action program* means a contractor's program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

*Compliance evaluation* means any one or combination of actions that the Office of Federal Contract Compliance Programs (OFCCP) may take to examine a Federal contractor's compliance with one or more of the requirements of E.O. 11246.

*Contractor* includes the terms "prime contractor" and "subcontractor."

*Deputy Assistant Secretary* means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

*Equal Opportunity clause* means the clause at 52.222-26, Equal Opportunity, as prescribed in 22.810(e).

*E.O. 11246* means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive order amending or superseding this order (see 22.802). This term

specifically includes the Equal Opportunity clause at 52.222-26, and the rules, regulations, and orders issued pursuant to E.O. 11246 by the Secretary of Labor or a designee.

*Prime contractor* means any person who holds, or has held, a Government contract subject to E.O. 11246.

*Recruiting and training agency* means any person who refers workers to any contractor or provides or supervises apprenticeship or training for employment by any contractor.

*Site of construction* means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

*Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee)—

(1) For the purchase, sale, or use of personal property or nonpersonal services that, in whole or in part, are necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

*Subcontractor* means any person who holds, or has held, a subcontract subject to E.O. 11246. The term *first-tier subcontractor* means a subcontractor holding a subcontract with a prime contractor.

*United States* means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

### 22.802 [Amended]

4. Section 22.802 is amended in paragraph (a) by removing "Government contracting" and "Government prime"; and in paragraph (b) by removing "Director" and adding "Deputy Assistant Secretary".

5. Section 22.803 is amended in paragraph (b) by removing "Director" and adding "Deputy Assistant Secretary"; and by revising paragraph (d) to read as follows:

### 22.803 Responsibilities.

\* \* \* \* \*

(d) In the event the applicability of E.O. 11246 and implementing

regulations is questioned, the contracting officer shall forward the matter to the Deputy Assistant Secretary, through agency channels, for resolution.

6. Section 22.804-1 is revised to read as follows:

**22.804-1 Nonconstruction.**

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and either a contract or subcontract of \$50,000 or more, or Government bills of lading that in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments. Each contractor and subcontractor shall develop its written affirmative action programs within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

**22.804-2 [Amended]**

7. Section 22.804-2 is amended in the first sentence of paragraph (b) by removing "contracting".

8. Section 22.805 is amended by revising the introductory text of paragraph (a); revising paragraphs (a)(1), (a)(2), and (a)(3); by redesignating paragraphs (a)(4) thru (a)(8) as (a)(5) thru (a)(9), respectively, and adding a new paragraph (a)(4); by revising the introductory text of the newly designated paragraph (a)(5); revising newly designated paragraphs (a)(5)(ii) and (v); (a)(6), (a)(7), (a)(8), and (a)(9); and in paragraph (b) by adding "Employment" after "Equal". The revised text reads as follows:

**22.805 Procedures.**

(a) *Preaward clearances for contracts and subcontracts of \$10 million or more (excluding construction).* (1) Except as provided in paragraphs (a)(4) and (a)(8) of this section, if the estimated amount of the contract or subcontract is \$10 million or more, the contracting officer shall request clearance from the appropriate OFCCP regional office before—

- (i) Award of any contract, including any indefinite delivery contract or letter contract; or
- (ii) Modification of an existing contract for new effort that would constitute a contract award.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of \$10 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed by letter or facsimile transmission.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward clearance to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward clearance request action should be based on the location of the recruiting and training agency in the United States.

(4) The contracting officer does not need to request a preaward clearance if—

(i) The specific proposed contractor is listed in OFCCP's National Preaward Registry via the Internet at <http://www.dol-esa.gov/preaward/>;

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The contracting officer documents the Registry review in the contract file.

(5) The contracting officer shall include the following information in the preaward clearance request:

\* \* \* \* \*

(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at \$10 million or more.

\* \* \* \* \*

(v) Place or places of performance of the prime contract and first-tier subcontracts estimated at \$10 million or more, if known.

\* \* \* \* \*

(6) The contracting officer shall allow as much time as feasible before award for the conduct of necessary compliance evaluation by OFCCP. As soon as the apparently successful offeror can be determined, the contracting officer shall process a preaward clearance request in accordance with agency procedures, assuring, if possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 days before the proposed award date.

(7) Within 15 days of the clearance request, OFCCP will inform the awarding agency of its intention to conduct a preaward compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a preaward compliance evaluation, clearance shall

be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a preaward compliance evaluation, OFCCP shall be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance shall be presumed and the awarding agency is authorized to proceed with the award.

(8) If the procedures specified in paragraphs (a)(6) and (a)(7) of this section would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward evaluation cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward evaluation from the OFCCP regional office.

(9) If, under the provisions of paragraph (a)(8) of this section, a postaward evaluation determines the contractor to be in noncompliance with E.O. 11246, the Deputy Assistant Secretary may authorize the use of the enforcement procedures at 22.809 against the noncomplying contractor.

\* \* \* \* \*

9. Section 22.806 is revised to read as follows:

**22.806 Inquiries.**

(a) An inquiry from a contractor regarding status of its compliance with E.O. 11246, or rights of appeal to any of the actions in 22.809, shall be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with E.O. 11246 shall be referred to the Deputy Assistant Secretary.

10. Section 22.807 is amended—

a. In paragraph (a)(1) by removing "Director" and adding "Deputy Assistant Secretary";

b. By revising paragraph (a)(2);

c. In the second sentence of paragraph (b)(1) by removing "or subcontractor";

d. In paragraph (b)(3) by adding a comma following "instrumentality" the second time it appears;

e. By revising paragraph (b)(5);

f. In paragraph (b)(6) by adding a hyphen between "Indefinite quantity" (both times it appears);

g. By revising paragraph (c);

h. By revising the introductory text of (d); and

i. In paragraph (d)(2) by removing "calendar".

The revised text read as follows:

**22.807 Exemptions.**

(a) \* \* \*

(2) *Specific contracts.* The Deputy Assistant Secretary may exempt an agency from requiring the inclusion of one or more of the requirements of E.O. 11246 in any contract if the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Deputy Assistant Secretary finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of E.O. 11246.

(b) \* \* \*

(5) *Facilities not connected with contracts.* The Deputy Assistant Secretary may exempt from the requirements of E.O. 11246 any of a contractor's facilities that the Deputy Assistant Secretary finds to be in all respects separate and distinct from activities of the contractor related to performing the contract, provided, that the Deputy Assistant Secretary also finds that the exemption will not interfere with, or impede the effectiveness of, E.O. 11246.

\* \* \* \* \*

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the contracting officer shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O. 11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the Deputy Assistant Secretary for approval.

(d) The Deputy Assistant Secretary may withdraw the exemption for a specific contract, or group of contracts, if the Deputy Assistant Secretary deems that such action is necessary and appropriate to achieve the purposes of E.O. 11246. Such withdrawal shall not apply—

\* \* \* \* \*

**22.809 [Amended]**

11. Section 22.809 is amended in the introductory text by removing

"Director" and adding "Deputy Assistant Secretary"; in paragraph (a) by removing "their" and adding "its"; and in paragraph (d) by removing Director and adding "Deputy Assistant Secretary".

12. Section 22.810 is amended—

a. By revising paragraph (a);

b. In paragraph (b) by adding "for Construction" after "Opportunity" the first time it appears;

c. By revising paragraph (c);

d. By revising paragraph (e),

e. In paragraph (f) by removing "and" the second time it appears and adding "when";

f. By removing paragraph (g); and

g. By redesignating paragraph (h) as (g).

The revised paragraphs read as follows:

**22.810 Solicitation provisions and contract clauses.**

(a) When a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, the contracting officer shall insert—

(1) The clause at 52.222-21, Prohibition of Segregated Facilities, in the solicitation and contract; and

(2) The provision at 52.222-22, Previous Contracts and Compliance Reports, in the solicitation.

\* \* \* \* \*

(c) The contracting officer shall insert the provision at 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation, in solicitations other than those for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected be \$10 million or more.

\* \* \* \* \*

(e) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless the contract is exempt from all of the requirements of E.O. 11246 (see 22.807(a)). If the contract is exempt from one or more, but not all, of the requirements of E.O. 11246, the contracting officer shall use the clause with its Alternate I.

\* \* \* \* \*

**22.802, 22.803, 22.807, 22.808, 22.809 [Amended]**

13. In addition to the amendments set forth above, subpart 22.8 is also amended by removing "EO" and adding "E.O." in the following places:

a. Section 22.802 (b), and (c);

b. Section 22.803 (a)(1), (a)(2) and (b);

c. Section 22.807 (a) introductory text (twice), (b)(2), (b)(3), and (b)(4) (twice);

d. Section 22.808; and

e. Section 22.809 introductory text, (c), and (d).

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

14. Section 52.212-3 is amended by revising the provision date; by removing (d)(1); and redesignating paragraphs (d)(2) and (d)(3) as (d)(1) and (d)(2) respectively; by revising the newly designated (d)(1); and in the newly redesignated paragraph (d)(2)(i) by removing "Subparts" and adding "parts". The revised text reads as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (Feb 1999)**

\* \* \* \* \*

(d) *Certifications and representations required to implement provisions of Executive Order 11246—*(1) Previous contracts and compliance. The offeror represents that—

(i) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It  has,  has not filed all required compliance reports.

\* \* \* \* \*

15. Section 52.222-21 is revised to read as follows:

**52.222-21 Prohibition of segregated facilities.**

As prescribed in 22.810(a)(1), insert the following clause:

**Prohibition of Segregated Facilities (Feb 1999)**

(a) *Segregated facilities*, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that

is subject to the Equal Opportunity clause of this contract.  
(End of clause)

16. Section 52.222-22 is amended by revising the introductory text, the date of the provision, and paragraph (a) to read as follows:

**52.222-22 Previous Contracts and Compliance Reports.**

As prescribed in 22.810(a)(2), insert the following provision:

**Previous Contracts and Compliance Reports (Feb 1999)**

\* \* \* \* \*

(a) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

\* \* \* \* \*

17. Section 52.222-23 is amended by revising the section heading, the introductory text, the provision heading, and the introductory text of paragraph (d) to read as follows:

**52.222-23 Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction.**

As prescribed in 22.810(b), insert the following provision:

**Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction (Feb 1999)**

\* \* \* \* \*

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the —

\* \* \* \* \*

18. Section 52.222-24 is revised to read as follows:

**52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.**

As prescribed in 22.810(c), insert the following provision:

**Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)**

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.  
(End of provision)

19. Section 52.222-25 is amended by revising the introductory text to read as follows:

**52.222-25 Affirmative Action Compliance.**

As prescribed in 22.810(d), insert the following provision:

\* \* \* \* \*

20. Section 52.222-26 is amended—  
a. By revising the introductory text and the clause date;

b. In paragraph (a) by removing “below” and adding “of this clause”;

c. By revising paragraphs (b) introductory text and (b)(1);

d. In paragraph (b)(4) by adding “s” to “advertisement”;

e. By revising paragraphs (b)(7), (b)(8), and the last sentence of (b)(9);

f. In paragraph (b)(10) by adding “s” to “subparagraph”;

g. In paragraph (b)(11) by removing “contracting agency” and adding “contracting officer”; and

h. By revising the introductory text of Alternate I.

The revised text reads as follows:

**52.222-26 Equal Opportunity.**

As prescribed in 22.810(e), insert the following clause:

**Equal Opportunity (Feb 1999)**

\* \* \* \* \*

(b) During performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

\* \* \* \* \*

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) \* \* \* In addition, sanctions may be imposed and remedies invoked against the

Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

\* \* \* \* \*

*Alternate I (Feb 1999).* As prescribed in 22.810(e), add the following as a preamble to the clause:

\* \* \* \* \*

21. Section 52.222-27 is amended—  
a. By revising the introductory text and the date of the clause;

b. In paragraph (a) by removing the definition of “Director” and adding “Deputy Assistant Secretary”;

(c) In paragraph (g)(4) by removing “Director” and adding “Deputy Assistant Secretary”;

d. In paragraph (g)(5) by removing “above” and adding “of this clause”;

e. In paragraph (g)(7) by removing “onsite” and adding “on-site” in its place;

f. By revising paragraph (g)(14);

g. In paragraph (h) by adding “of this clause” after “(16)” (both times it appears); and

h. In paragraph (m) by removing “above” and “Director” and adding “of this clause” and “Deputy Assistant Secretary”, respectively.

The revised text reads as follows:

**52.222-27 Affirmative Action Compliance Requirements for Construction.**

As prescribed in 22.810(f), insert the following clause:

**Affirmative Action Compliance Requirements for Construction (Feb 1999)**

(a) \* \* \*

*Deputy Assistant Secretary*, as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

\* \* \* \* \*

(g) \* \* \*

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

\* \* \* \* \*

**52.222-28 [Reserved]**

22. Section 52.222-28 is removed and reserved.

23. Section 52.222-29 is revised to read as follows:

**52.222-29 Notification of visa denial.**

As prescribed in 22.810(g), insert the following clause:

**Notification of Visa Denial (Feb 1999)**

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual’s race, color,



religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 7325, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

[FR Doc. 98-33515 Filed 12-16-98; 8:45 am]

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## DEPARTMENT OF DEFENSE

### General Services Administration

### National Aeronautics and Space Administration

#### 48 CFR Part 31

[FAC 97-10; FAR Case 97-303; Item IV]

RIN 9000-AH90

#### Federal Acquisition Regulation; Limitation on Allowability of Compensation for Certain Contractor Personnel

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

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 63 FR 9066, February 23, 1998, as Item XIII of Federal Acquisition Circular 97-04. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) by limiting the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

**EFFECTIVE DATE:** February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202)

501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-10, FAR case 97-303.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) limits allowable compensation costs of senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP). Section 808 requires OFPP to review commercially available surveys of executive compensation and, on the basis of the results of the review, determine the benchmark compensation amount for each fiscal year. This determination shall be made in consultation with the Defense Contract Audit Agency and other executive agencies as the Administrator deems appropriate.

On February 23, 1998, a notice was published in the **Federal Register** (63 FR 8981) that indicated the Acting Administrator of OFPP had determined the benchmark compensation amount to be \$340,650. The notice further indicated that this amount is to be used as the benchmark amount for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP. To date, OFPP has not revised the amount.

An interim FAR rule was published in the **Federal Register** on February 23, 1998 (63 FR 9066). Public comments were received from five sources. All comments were considered in developing the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle contained in this rule.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

##### Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 63 FR 9066, February 23, 1998, is adopted as a final rule with the following changes:

##### PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-6 is amended in paragraph (k) by revising the heading; and by revising paragraphs (p)(2)(ii) and adding (p)(2)(iv) to read as follows:

##### 31.205-6 Compensation for personal services.

\* \* \* \* \*

(k) *Deferred compensation other than pensions.* \* \* \*

\* \* \* \* \*

(p) \* \* \*

(2) \* \* \*

\* \* \* \* \*

(ii) *Senior executive* means—

(A) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(B) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(C) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

\* \* \* \* \*

(iv) *Contractor's headquarters* means the highest organizational level from

which executive compensation costs are allocated to Government contracts.

[FR Doc. 98-33516 Filed 12-16-98; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 44

[FAC 97-10; FAR Case 97-016; Item V]

RIN 9000-AH82

#### Federal Acquisition Regulation; Contractor Purchasing System Review Exclusions

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to eliminate unnecessary contractor purchasing system reviews (CPSRs).

**EFFECTIVE DATE:** February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 97-016.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends—

(1) FAR 44.302 to exclude competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts, and sales of commercial items pursuant to FAR Part 12, from the dollar amount used to determine if a contractor's level of sales to the Government warrants the conduct of a CPSR; and

(2) FAR 44.303 to exclude subcontracts awarded by a contractor exclusively in support of Government contracts that are competitively

awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to FAR Part 12, from evaluation during a CPSR.

A proposed rule was published in the **Federal Register** at 63 FR 649, January 6, 1998. Two respondents submitted comments on the proposed rule. All comments were considered in the development of the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contractors with sales to the Government (excluding competitively awarded firm fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to FAR Part 12) that are expected to exceed \$25 million during the next 12 months, and no small entities meet this criterion.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 48 CFR Part 44

Government procurement.

Dated: December 14, 1998.

##### Ralph DeStefano,

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 44 is amended as set forth below:

#### PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 44 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 44.302 is revised to read as follows:

##### 44.302 Requirements.

(a) The ACO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. If a contractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to Part 12) are expected to exceed \$25 million during the next 12 months, perform a review to determine if a CPSR is needed. Sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if it is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every three years the ACO shall determine whether a purchasing system review is necessary. If necessary, the cognizant contract administration office will conduct a purchasing system review.

3. Section 44.303 is amended by revising the introductory text to read as follows:

##### 44.303 Extent of review.

A CPSR requires an evaluation of the contractor's purchasing system. Unless segregation of subcontracts is impracticable, this evaluation shall not include subcontracts awarded by the contractor exclusively in support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to part 12. The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to—

\* \* \* \* \*

[FR Doc. 98-33517 Filed 12-16-98; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 46 and 52**

[FAC 97-10; FAR Case 96-009; Item VI]

RIN 9000-AH61

**Federal Acquisition Regulation;  
Contract Quality Requirements**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect a preference for commercial contract quality requirements, rather than Federal or military specifications, and to permit greater flexibility in specifying higher-level contract quality requirements.

**EFFECTIVE DATE:** February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 96-009.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A proposed rule was published in the **Federal Register** at 62 FR 35891, July 2, 1997. The revisions in the final rule are based on the analysis of public comments and further clarification of the rule. The rule revises FAR 46.202-4, 46.311, and the clause at 52.246-11 to replace references to Government specifications with references to commercial quality standards as examples of higher-level contract quality requirements; to require the contracting officer to indicate in the

solicitation which higher-level quality standards will satisfy the Government's requirement; and, if more than one standard is listed in the solicitation, to require the offeror to indicate its selection by checking a block.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies procedures for, and permits greater flexibility in, specifying higher-level quality requirements in Government contracts.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 46 and 52**

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 46 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 46 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 46—QUALITY ASSURANCE**

2. Section 46.202-4 is revised to read as follows:

**46.202-4 Higher-level contract quality requirements.**

(a) Requiring compliance with higher-level quality standards is appropriate in solicitations and contracts for complex or critical items (see 46.203(b) and (c)) or when the technical requirements of the contract require—

(1) Control of such things as work operations, in-process controls, and inspection; or

(2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(b) When the contracting officer, in consultation with technical personnel, finds it is in the Government's interest to require that higher-level quality standards be maintained, the contracting officer shall use the clause prescribed at 46.311. The contracting officer shall indicate in the clause which higher-level quality standards will satisfy the Government's requirement. Examples of higher-level quality standards are ISO 9001, 9002, or 9003; ANSI/ASQC Q9001, Q9002, or Q9003; QS-9000; AS-9000; ANSI/ASQC E4; and ANSI/ASME NQA-1.

3. Section 46.311 is revised to read as follows:

**46.311 Higher-level contract quality requirement.**

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-4).

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 52.246-11 is revised to read as follows:

**52.246-11 Higher-Level Contract Quality Requirement.**

As prescribed in 46.311, insert the following clause:

**Higher-Level Contract Quality Requirement (Feb 1999)**

The Contractor shall comply with the higher-level quality standard selected below. [If more than one standard is listed, the offeror shall indicate its selection by checking the appropriate block.]

Title	Number	Date	Tailoring
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

[Contracting Officer insert the title, number (if any), date, and tailoring (if any) of the higher-level quality standards.]  
(End of clause)

[FR Doc. 98-33518 Filed 12-16-98; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Part 46

[FAC 97-10; FAR Case 97-027; Item VII]

RIN 9000-AH94

#### Federal Acquisition Regulation; Mandatory Government Source Inspection

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to facilitate the elimination of unnecessary requirements for Government contract quality assurance at source. This rule deletes the mandatory requirement for Government contract quality assurance at source on all contracts that include a higher-level contract quality requirement, and for supplies requiring inspection that are destined for overseas shipment.

**EFFECTIVE DATE:** February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 97-027.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends FAR 46.402 to eliminate unnecessary requirements for Government contract quality assurance at source. The rule eliminates mandatory Government source inspection under contracts that contain higher-level quality requirements or that cover supplies to be shipped overseas.

A proposed rule was published in the **Federal Register** at 63 FR 13770, March

20, 1998. Nine respondents submitted comments on the proposed rule. All comments were considered in the development of the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

No public comments were received in response to the Initial Regulatory Flexibility Analysis.

We expect both large and small entities to experience a reduction in the administrative burden by eliminating unnecessary Government source inspection under contracts that contain higher-level quality requirements or that cover supplies to be shipped overseas. DoD and civilian agencies administer the contracts of approximately 20,289 large businesses and 51,691 small entities. Approximately 20 percent have contracts that contain the clause at FAR 52.246-11, Higher level Contract Quality Requirement (Government Specification).

There are no reporting, recordkeeping, or other compliance requirements likely to result from the rule.

No significant negative economic impacts of the rule were identified during our analysis or during the public comment period. The rule is expected to reduce costs and administrative burdens for both contractors and the Government.

We expect these revisions to contribute to an efficient and effective acquisition process. We initially considered making all of the requirements at FAR 46.402 discretionary but decided that this would be premature since a Defense Contract Management Command process action team reviewing source inspection and acceptance policies has not completed its review and made its final recommendations.

A copy of the FRFA may be obtained from the FAR Secretariat.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 48 CFR Part 46

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 46 is amended as set forth below:

#### PART 46—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 46 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

##### 46.402 [Amended]

2. Section 46.402 is amended—  
a. By removing paragraphs (e) and (g);  
b. By redesignating paragraphs (f) and (h) as (e) and (f), respectively; and  
c. In the newly designated paragraph (e) by adding “or” at the end of the paragraph.

[FR Doc. 98-33519 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Part 48

[FAC 97-10; FAR Case 96-011; Item VIII]

RIN 9000-AH37

#### Federal Acquisition Regulation; No- Cost Value Engineering Change Proposals

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

**ACTION:** Interim rule adopted as final without change.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item X of Federal Acquisition Circular 97-05 at 63 FR 34078, June 22, 1998, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

**EFFECTIVE DATE:** December 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS

Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-10, FAR case 96-011.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An interim rule was published at 63 FR 34078, June 22, 1998, to clarify that the no-cost VECP guidance at FAR 48.104-3 permits the use of no-cost settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings; and when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

No public comments were received in response to the interim FAR rule. Therefore, the interim FAR rule is being converted to a final rule without change.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and 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. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is summarized as follows:

This rule clarifies that the guidance at FAR 48.104-3, Sharing alternatives—no-cost settlement method, permits use of no-cost VECP settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings; and, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

The FRFA has been provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or

collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 48**

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final Without Change**

Accordingly, the interim rule amending 48 CFR Part 48, which was published at 63 FR 34078, June 22, 1998, is adopted as a final rule without change.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 98-33520 Filed 12-16-98; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 52**

[FAC 97-10; FAR Case 97-011; Item IX]

**RIN 9000-AH73**

**Federal Acquisition Regulation; Evidence of Shipment in Electronic Data Interchange (EDI) Transactions**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased on a free on board (f.o.b.) destination basis with inspection and acceptance at origin.

**EFFECTIVE DATE:** February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at

(202) 501-1900. Please cite FAC 97-10, FAR case 97-011.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule revises the clause at FAR 52.247-48 to facilitate the use of EDI for submission of invoices under contracts awarded on an f.o.b. destination basis with inspection and acceptance at origin. The rule eliminates requirements for contractors to provide evidence of shipment with invoices for payment under such contracts. However, contractors are required to retain, and to make available to the Government for review as necessary, the evidence of shipment documentation for a period of 3 years after final payment under the contract.

A proposed rule was published on January 27, 1998 (63 FR 4074). Six sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies to a limited number of contracts, *i.e.*, contracts for the purchase of supplies on an f.o.b. destination basis with inspection and acceptance at origin. Therefore, the rule is estimated to affect only a small number of entities, both large and small.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a revised paperwork burden under OMB Clearance 9000-0061 reflecting a slight increase to the hours will be forwarded to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a *Federal Register* notice published on January 27, 1998. No comments were received.

**List of Subjects in 48 CFR Part 52**

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 52 is amended as set forth below:

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR Part 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.247-48 is revised to read as follows:

**52.247-48 F.o.b. Destination—Evidence of Shipment.**

As prescribed in 47.305-4(c), insert the following clause:

**F.o.b. Destination—Evidence of Shipment (Feb 1999)**

(a) If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

(1) Shall not submit an invoice for payment until the supplies covered by the invoice have been shipped to the destination; and

(2) Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 3 years after final payment under the contract:

(i) If transportation is accomplished by common carrier, a signed copy of the commercial bill of lading for the supplies covered by the Contractor's invoice, indicating the carrier's intent to ship the supplies to the destination specified in the contract.

(ii) If transportation is accomplished by parcel post, a copy of the certificate of mailing.

(iii) If transportation is accomplished by other than common carrier or parcel post, a copy of the delivery document showing receipt at the destination specified in the contract.

(b) The Contractor is not required to submit evidence of shipment documentation with its invoice.

(End of clause)

[FR Doc. 98-33521 Filed 12-16-98; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Parts 1, 19, 32, 37, 42, 52, and 53

[FAC 97-10; Item X]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Technical amendments.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

**EFFECTIVE DATE:** January 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

**List of Subjects in 48 CFR Parts 1, 19, 32, 37, 42, 52, and 53**

Government procurement.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 1, 19, 32, 37, 42, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 19, 32, 37, 42, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

2. The table in section 1.106 is amended by removing the FAR segment and the corresponding OMB Control Number entry for Part 30; and by adding entry 52.247-48, in numerical order, to read as follows:

**1.106 OMB Approval under the Paperwork Reduction Act.**

\* \* \* \* \*

FAR segment	OMB Control No.
* * * * *	
52.247-48 .....	9000-0061
* * * * *	

**PART 19—SMALL BUSINESS PROGRAMS**

3. Section 19.102(g) is amended in the tables by revising the parentheticals following "DIVISION F—WHOLESALE TRADE" and "DIVISION G—RETAIL TRADE" to read as follows:

**19.102 Size standards.**

\* \* \* \* \*

**Division F—Wholesale Trade**

(The following size standards are not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

\* \* \* \* \*

**Division G—Retail Trade**

(The following size standards are not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)

\* \* \* \* \*

**19.502-5 [Amended]**

4. Section 19.502-5 is amended in paragraph (e) by revising the word "contract" to read "acquisition".

**PART 32—CONTRACTING FINANCING**

**32.908 [Amended]**

5. Section 32.908 is amended in paragraph (a)(3) by revising "(iii)" to read "(ii)", and in paragraph (c)(3) by revising the word "paragraph" to read "paragraphs"; and inserting "and (ii)" after "(a)(1)(i)".

**PART 37—SERVICE CONTRACTING**

**37.602-3 [Amended]**

6. Section 37.602-3 is amended by revising "15.605" to read "15.304".

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**42.203 [Amended]**

6A. Section 42.203 is amended in the last sentence by revising "http://www.dcmc.dcrb.dla.mil" to read "http://www.dcmc.hq.dla.mil/casbook/casbook.htm".

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**52.212-5 [Amended]**

7. Section 52.212-5 is amended by revising the date of the clause to read "(Jan 1999)"; in paragraph (b)(5) by revising "Limitation" to read

“Limitations”; and in paragraph (e)(4) by revising “Flagged” to read “Flag”.

**52.219-9 [Amended]**

8. Section 52.219-9 is amended in the first sentence of paragraph (d)(5) by revising “Assistance” to read “Access”; and by revising the term “PRONET” to read “PRO-Net” (three times).

**52.222-37 [Amended]**

9. Section 52.222-37 is amended by revising the date of the clause to read “(Jan 1999)”; and in paragraph (c) by revising “March 31” to read “September 30” both times it appears.

**PART 53—FORMS**

10. Section 53.228 is amended by revising paragraphs (a), (b), (c), (e), (j), and (m) to read as follows:

**53.228 Bonds and insurance.**

\* \* \* \* \*

(a) *SF 24 (Rev. 10/98) Bid Bond.* (See 28.106-1.) SF 24 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(b) *SF 25 (Rev. 5/96) Performance Bond.* (See 28.106-1(b).) SF 25 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

(c) *SF 25-A (Rev. 10/98) Payment Bond.* (See 28.106-1(c).) SF 25-A is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

\* \* \* \* \*

(e) *SF 28 (Rev. 6/96) Affidavit of Individual Surety.* (See 28.106-1(e) and 28.203(b).) SF 28 is authorized for local reproduction and a copy is furnished for

this purpose in Part 53 of the looseleaf edition of the FAR.

\* \* \* \* \*

(j) *SF 275 (Rev. 10/98) Reinsurance Agreement in Favor of the United States.* (See 28.106-1(j) and 28.202-1(a)(4).) SF 275 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

\* \* \* \* \*

(m) *SF 1416 (Rev. 10/98) Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

\* \* \* \* \*

11. Section 53.301-24 is revised to read as follows:

**53.301-24 Bid Bond.**

BILLING CODE 6820-EP-P

<b>BID BOND</b> <i>(See instruction on reverse)</i>	DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>	OMB NO.:9000-0045
--	---	-------------------

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION
--	--

SURETY(IES) *(Name and business address)*

PENAL SUM OF BOND				BID IDENTIFICATION		
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR <i>(Construction, Supplies, or Services)</i>	

**OBLIGATION:**  
 We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**  
 The Principal has submitted the bid identified above.

**THEREFORE:**  
 The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

**WITNESS:**  
 The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. _____ <i>(Seal)</i>	2. _____ <i>(Seal)</i>	3. _____ <i>(Seal)</i>	<i>Corporate Seal</i>
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	3. _____	

INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. _____ <i>(Seal)</i>	2. _____ <i>(Seal)</i>		
NAME(S) <i>(Typed)</i>	1. _____	2. _____		

CORPORATE SURETY(IES)					
<b>SURETY A</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1. _____	2. _____		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____		



SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

## INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed \_\_\_\_\_ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.  
 (b) Where individual sureties are involved, a completed Affidavit of Individual surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

12. Section 53.301-25 is revised to read as follows:

53.301-25 Performance Bond.

<b>PERFORMANCE BOND</b> <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB No.: 9000-0045																				
Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.																						
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION																					
SURETY(IES) <i>(Name(s) and business address(es))</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="4" style="text-align:center; font-size:small;">PENAL SUM OF BOND</th> </tr> <tr> <th style="width:25%; font-size:small;">MILLION(S)</th> <th style="width:25%; font-size:small;">THOUSAND(S)</th> <th style="width:25%; font-size:small;">HUNDRED(S)</th> <th style="width:25%; font-size:small;">CENTS</th> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="font-size:small;">CONTRACT DATE</td> <td colspan="2" style="font-size:small;">CONTRACT NO.</td> </tr> <tr> <td colspan="2" style="height: 20px;"></td> <td colspan="2"></td> </tr> </table>		PENAL SUM OF BOND				MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS					CONTRACT DATE		CONTRACT NO.					
PENAL SUM OF BOND																						
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS																			
CONTRACT DATE		CONTRACT NO.																				

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal -

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.


WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL			
SIGNATURE(S)	1. _____ <div style="text-align:right; font-size:xx-small;">(Seal)</div>	2. _____ <div style="text-align:right; font-size:xx-small;">(Seal)</div>	3. _____ <div style="text-align:right; font-size:xx-small;">(Seal)</div>
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	3. _____
INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. _____ <div style="text-align:right; font-size:xx-small;">(Seal)</div>	2. _____ <div style="text-align:right; font-size:xx-small;">(Seal)</div>	
NAME(S) <i>(Typed)</i>	1. _____	2. _____	
CORPORATE SURETY(IES)			
<b>SURETY A</b>	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT \$ _____
	SIGNATURE(S)	1. _____	2. _____
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____

**CORPORATE SURETY(IES) (Continued)**

<b>SURETY B</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY C</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY D</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY E</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY F</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY G</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		

<b>BOND PREMIUM</b> 	RATE PER THOUSAND (\$)	TOTAL (\$)
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**INSTRUCTIONS**

- This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
- Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
- (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
  - Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.
- Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
- Type the name and title of each person signing this bond in the space provided.

13. Section 53.301-25A is revised to read as follows:

53.301-25-A Payment Bond.

<b>PAYMENT BOND</b> <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB No.: 9000-0045								
Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405										
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION									
SURETY(IES) <i>(Name(s) and business address(es))</i>	PENAL SUM OF BOND <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> CONTRACT DATE      CONTRACT NO.		MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS				
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS							

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1. _____ <div style="text-align:right; font-size:small;">(Seal)</div>	2. _____ <div style="text-align:right; font-size:small;">(Seal)</div>	3. _____ <div style="text-align:right; font-size:small;">(Seal)</div>	Corporate Seal	
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	3. _____		
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1. _____ <div style="text-align:right; font-size:small;">(Seal)</div>	2. _____ <div style="text-align:right; font-size:small;">(Seal)</div>			
NAME(S) <i>(Typed)</i>	1. _____	2. _____			
CORPORATE SURETY(IES)					
<b>SURETY A</b>	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT \$ _____		Corporate Seal
	SIGNATURE(S)	1. _____	2. _____		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____		

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	SIGNATURE(S)	1.	2.	\$	
	NAME(S) & TITLE(S) (Typed)	1.	2.		

## INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated

"SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

14. Section 53.301-28 is revised to read as follows:

53.301-28 Affidavit of Individual Surety.

<b>AFFIDAVIT OF INDIVIDUAL SURETY</b> <i>(See instructions on reverse)</i>	OMB No.: 9000-0001
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Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

STATE OF	<b>SS.</b>
COUNTY OF	

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)	2. HOME ADDRESS (Number, Street, City, State, ZIP code)
3. TYPE AND DURATION OF OCCUPATION	4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) <i>(Number, Street, City, State, ZIP Code)</i>	6. TELEPHONE NUMBER HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

**DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.**

10. SIGNATURE	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)
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<b>12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:</b>					<b>Official Seal</b>
a. DATE OATH ADMINISTERED			b. CITY AND STATE (Or other jurisdiction)		
MONTH	DAY	YEAR			
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH <i>(Type or print)</i>		d. SIGNATURE	e. MY COMMISSION EXPIRES		

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**INSTRUCTIONS**

1. Individual sureties on bonds executed in connection with Government contracts, shall complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety shall have the completed form notarized.
2. No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties. Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports.
3. United States citizenship is a requirement for individual sureties. However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations - any foreign country; the Commonwealth of Puerto Rico; the Virgin Islands; the Canal Zone; Guam; or any other territory or possession of the United States.
4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of firm, partnership, or joint venture, or an officer of the corporation involved.

15. Section 53.301-275 is revised to read as follows:

53.301-275 Reinsurance Agreement in Favor of the United States.

<b>REINSURANCE AGREEMENT IN FAVOR OF THE UNITED STATES</b> <i>(See instructions on reverse)</i>		OMB No.: 9000-0045
Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.		
1. DIRECT WRITING COMPANY*	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT	
	1B. STATE OF INCORPORATION	
2. REINSURING COMPANY*	2A. AMOUNT OF THIS REINSURANCE (\$)	
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT	
	2C. STATE OF INCORPORATION	
<b>3. DESCRIPTION OF BOND</b>		
3A. DESCRIPTION OF BOND <i>(Type, purpose etc.) (If associated with contract number, date, amount, etc., include name of Government agency involved.)</i>	3B. PENAL SUM OF BOND \$	
	3C. DATE OF BOND	3D. BOND NO.
	3E. PRINCIPAL*	
	3F. STATE OF INCORPORATION <i>(If Corporate Principal)</i>	

**AGREEMENT:**

(a) The Direct Writing Company named above is bound as surety to the United States of America, on the bond described above, wherein the above-named is the principal. The bond is given for the protection of the United States and the Direct Writing Company has applied to the above Reinsuring Company to be reinsured and counter-secured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

**TERMS AND CONDITIONS:**

The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the bond to the extent of the "Amount of this Reinsurance," or for any less sum than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the United States.

**THEREFORE:**

1. If the Direct Writing Company fails to pay any default under the bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

2. The Reinsuring Company further covenants and agrees that in case of default on the bond for the "Amount of this Reinsurance," or more, the United States may sue the Reinsuring Company for the "Amount of this Reinsurance" or for the full amount of the default when the default is less than the "Amount of this Reinsurance."

**WITNESS**

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date above -- written opposite their respective names.

(Over)

\*Items 1, 2, 3E - Furnish legal name, business address and ZIP Code.



<b>4. DIRECT WRITING COMPANY</b>		
4A.(1). SIGNATURE	(2). ATTEST: SIGNATURE	<i>Corporate Seal</i>
4B.(1) NAME AND TITLE <i>(Typed)</i>	4B.(2). NAME AND TITLE <i>(Typed)</i>	
<b>5. REINSURING COMPANY</b>		
5A.(1). SIGNATURE	(2). ATTEST: SIGNATURE	<i>Corporate Seal</i>
5B.(1). NAME AND TITLE <i>(Typed)</i>	5B.(2). NAME AND TITLE <i>(Typed)</i>	

### INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on bonds running to the United States except Miller Act Performance and Payment Bonds. See FAR (48 CFR) 28.202-1 and 53.228(j) and 31 CFR 223.11(b)(1). If this form is used to reinsure a bid bond, the "Penal Sum of Bond" and "Amount of this Reinsurance" may be expressed as percentage of the bid provided the actual amounts will not exceed the companies' respective underwriting limitations.

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

16. Section 53.301-1416 is revised to read as follows:

53.301-1416 Payment Bond for Other than Construction Contracts.

<b>PAYMENT BOND FOR OTHER THAN CONSTRUCTION CONTRACTS</b> <i>(See instructions on reverse)</i>		DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>		OMB NO.:9000-0045		
Public reporting burden for this collection of information is estimated to average 26 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20406.						
PRINCIPAL <i>(Legal name and business address)</i>			TYPE OF ORGANIZATION <i>("X" one)</i>			
			<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION			
SURETY(IES) <i>(Name(s) and business address(es)) (Include ZIP code)</i>			STATE OF INCORPORATION			
			PENAL SUM OF BOND			
			MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
			CONTRACT DATE		CONTRACT NO.	

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payment to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expiration of ninety (90) days after the date of which the last labor was performed or material furnishing, have a direct right of action against the principal and Surety(ies) on this bond for the sum or sums justly due. The claimant, however, may not bring a suit or any action -

(1) Unless claimant, other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim is made. The notice is to state with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration one (1) year following the date on which claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the suit is brought.

(3) Other than in the United States District court for the district in which the the contract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.	Corporate Seal	
		<i>(Seal)</i>	<i>(Seal)</i>		<i>(Seal)</i>
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.	Corporate Seal	
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.		Corporate Seal	
		<i>(Seal)</i>	<i>(Seal)</i>		<i>(Seal)</i>
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		Corporate Seal	
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

## INSTRUCTIONS

- This form is authorized for use when payment bonds are required under FAR (48 CFR) 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
- Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
- (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.  
  
(b) Where individual Sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
- Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
- Type the name and title of each person signing this bond in the space provided.

**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 (Public Law 104-121). It consists of a summary of rules appearing in

Federal Acquisition Circular (FAC) 97-09 which amend the FAR. The rules marked with an asterisk (\*) are those for which a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97-10 which precedes this document. This document may be obtained from the Internet at <http://www.arnet.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501-4225.

**SUPPLEMENTARY INFORMATION:**

**LIST OF RULES IN FAC 97-10**

Item	Subject	FAR case	Analyst
I	Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (Interim).	97-307	Moss
II	Limits for Indefinite-Quantity Contracts	98-016	DeStefano
III	Office of Federal Contract Compliance Programs National Pre-Award Registry	98-607	O'Neill
IV	Limitation on Allowability of Compensation for Certain Contractor Personnel	97-303	Nelson
V	Contractor Purchasing System Review Exclusions	97-016	Klein
VI	Contract Quality Requirements	96-009	Klein
VII	Mandatory Government Source Inspection*	97-027	Klein
VIII	No-Cost Value Engineering Change Proposals*	96-011	Klein
IX	Evidence of Shipment in Electronic Data Interchange Transactions	97-011	Nelson

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-10 amends the Federal Acquisition Regulation (FAR) as specified below:

**Item I—Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program**

[FAR Case 97-307]

This interim rule amends FAR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 to implement the Small Business Administration Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

**Item II—Limits for Indefinite-Quantity Contracts**

[FAR Case 98-016]

This final rule amends FAR 16.504(a) to clarify that maximum and minimum limits for indefinite-quantity contracts may be expressed as a number of units or dollar value.

**Item III—Office of Federal Contract Compliance Programs National Pre-Award Registry**

[FAR Case 98-607]

This final rule amends FAR part 22 and related clauses to (1) inform the procurement community of the availability of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) National Pre-Award Registry (Registry), accessible through the Internet, that contains contractor establishments who have received a preaward clearance within the preceding 24 months, and the option to use the information in the Registry in lieu of submitting a written request for a preaward clearance; and (2) implement revised Department of Labor (DoL) regulations pertaining to equal employment opportunity and affirmative action requirements for Federal contractors and subcontractors.

**Item IV—Limitation on Allowability of Compensation for Certain Contractor Personnel**

[FAR Case 97-303]

The interim rule published as Item XIII of FAC 97-04 is converted to a final rule with minor clarifying amendments at FAR 31.205-6(p)(2). The rule implements Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 808 limits allowable compensation costs for senior executives of contractors to the benchmark year by the Administrator, Office of Federal Procurement Policy (OFPP). The benchmark compensation amount is \$340,650 for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP.

**Item V—Contractor Purchasing System Review Exclusions**

[FAR Case 97-016]

This final rule amends FAR 44.302 and 44.303 to exclude competitively awarded firm-fixed-price and competitively awarded fixed-price contracts with economic price adjustment, and sales of commercial items pursuant to FAR part 12, from the dollar amount used to determine if a contractor's level of sales to the Government warrants the conduct of a CPSR; and to exclude subcontracts awarded by a contractor exclusively in

support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to FAR part 12, from evaluation during a CPSR.

#### **Item VI—Contract Quality Requirements**

[FAR Case 96-009]

This final rule amends FAR 46.202-4, 46.311, and 52.246-11 to replace references to Government specifications with references to commercial quality standards as examples of higher-level contract quality requirements; to require the contracting officer to indicate in the solicitation which higher-level quality standards will satisfy the Government's requirement; and, if more than one standard is listed in the solicitation, to require the offeror to indicate its selection by checking a block.

#### **Item VII—Mandatory Government Source Inspection**

[FAR Case 97-027]

This final rule amends FAR 46.402 to facilitate the elimination of unnecessary requirements for Government contract quality assurance at source. This rule deletes the mandatory requirements for Government contract quality assurance at source on all contracts that include a higher-level contract quality requirement, and for supplies requiring inspection that are destined for overseas shipment.

#### **Item VIII—No-Cost Value Engineering Change Proposals**

[FAR Case 96-011]

The interim rule published as Item X of FAC 97-05 is converted to a final rule without change. The rule revises FAR 48.104-3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting

officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

#### **Item IX—Evidence of Shipment in Electronic Data Interchange (EDI) Transactions**

[FAR Case 97-011]

This final rule revises the clause at FAR 52.247-48 to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased on a free on board (f.o.b.) destination basis with inspection and acceptance at origin.

Dated: December 14, 1998.

**Ralph DeStefano,**

*Acting Director, Federal Acquisition Policy Division.*

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