

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2011–0076, Sequence 3]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2005–51;  
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.

**SUMMARY:** This document summarizes  
the Federal Acquisition Regulation  
(FAR) rules agreed to by DoD, GSA, and  
NASA in this Federal Acquisition  
Circular (FAC) 2005–51. A companion  
document, the *Small Entity Compliance  
Guide* (SECG), follows this FAC. The  
FAC, including the SECG, is available  
via the Internet at [http://  
www.regulations.gov](http://www.regulations.gov).

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

**FOR FURTHER INFORMATION CONTACT:** The  
analyst whose name appears in the table  
below in relation to each FAR case.  
Please cite FAC 2005–51 and the  
specific FAR case numbers. For  
information pertaining to status or  
publication schedules, contact the  
Regulatory Secretariat at (202) 501–  
4755.

LIST OF RULES IN FAC 2005–51

Item	Subject	FAR case	Analyst
I .....	Women-Owned Small Business (WOSB) Program (Interim) .....	2010–015	Morgan.
II .....	Clarification of Standard Form 26—Award/Contract .....	2009–029	Jackson.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow.  
For the actual revisions and/or  
amendments made by these FAR cases,  
refer to the specific item numbers and  
subject set forth in the documents  
following these item summaries. FAC  
2005–51 amends the FAR as specified  
below:

**Item I—Women-Owned Small Business  
(WOSB) Program (FAR Case 2010–015)  
(Interim)**

This interim rule amends the FAR to  
add subpart 19.15, Women-Owned  
Small Business Program, which will  
assist Federal agencies in achieving the  
5 percent statutory goal for contracting  
with women-owned small business  
(WOSB) concerns.

Agencies may restrict competition to  
economically disadvantaged women-  
owned small business (EDWOSB)  
concerns for contracts assigned a North  
American Industry Classification  
Systems (NAICS) code in an industry in  
which the Small Business  
Administration has determined that  
WOSB concerns are underrepresented  
in Federal procurement. For NAICS  
code industries where WOSB concerns  
are not just underrepresented, but  
substantially underrepresented,  
agencies may restrict competition to  
WOSB concerns eligible under the  
WOSB Program.

EDWOSB concerns and WOSB  
concerns eligible under the WOSB  
Program must be owned and controlled  
by one or more women who are citizens  
of the United States. An EDWOSB  
concern is automatically a WOSB

concern eligible under the WOSB  
Program.

**Item II—Clarification of Standard Form  
26—Award/Contract (FAR Case 2009–  
029)**

This final rule amends the FAR to  
revise FAR part 53 to amend the  
Standard Form (SF) 26, Award/Contract,  
above blocks 17 and 18 and in block 18  
to clarify that block 18 should not be  
used when awarding a negotiated  
procurement and should only be  
checked when awarding a sealed bid  
contract. The changes will not prevent  
contracting officers from using block 17  
of the SF 26 when awarding negotiated  
procurements in which the signature of  
both parties, on a single document, is  
required; it will only prohibit them from  
using block 18 of the SF 26 when  
awarding negotiated procurements.

Dated: March 24, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide  
Acquisition Policy.*

Federal Acquisition Circular (FAC)  
2005–51 is issued under the authority of  
the Secretary of Defense, the  
Administrator of General Services, and  
the Administrator for the National  
Aeronautics and Space Administration.

Unless otherwise specified, all  
Federal Acquisition Regulation (FAR)  
and other directive material contained  
in FAC 2005–51 is effective April 1,  
2011, except for Item II which is  
effective May 2, 2011.

Dated: March 23, 2011.

**Richard Ginman,**

*Deputy Director, Defense Procurement and  
Acquisition Policy (Contingency Contracting  
and Acquisition Policy).*

Dated: March 23, 2011.

**Joseph A. Neurauter,**

*Senior Procurement Executive/Deputy CAO,  
Office of Acquisition Policy, U.S. General  
Services Administration.*

Dated: March 18, 2011.

**Leigh Pomponio,**

*Procurement Analyst, National Aeronautics  
and Space Administration.*

[FR Doc. 2011–7367 Filed 3–31–11; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 2, 4, 6, 13, 14, 15, 18, 19,  
26, 33, 36, 42, 52, and 53**

**[FAC 2005–51; FAR Case 2010–015; Item  
I; Docket 2010–0015, Sequence 1]**

**RIN 9000–AL97**

**Federal Acquisition Regulation;  
Women-Owned Small Business  
(WOSB) Program**

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

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's regulations establishing the Women-Owned Small Business Program.

**DATES:** *Effective Date:* April 1, 2011.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before May 31, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-51, FAR Case 2010-015, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010-015" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010-015." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010-015" on your attached document.

- *Fax:* (202) 501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005-51, FAR Case 2010-015, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, at (202) 501-2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-51, FAR Case 2010-015.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD, GSA, and NASA are issuing an interim rule amending the FAR, to implement changes to the Small Business Administration (SBA) regulations at 13 CFR part 127, entitled "Women-Owned Small Business Federal Contract Program" and implements procedures that were authorized by the Small Business Act (Pub. L. 85-536, as amended). The Small Business Act assists in leveling the procurement playing field to enable small business concerns, including women-owned

small business (WOSB) concerns and economically disadvantaged women-owned small business (EDWOSB) concerns, to compete for Federal contracting opportunities.

On December 21, 2000, Congress enacted the Small Business Reauthorization Act of 2000 ("Act") (Pub. L. 106-554). Section 811 of Appendix I of the Act amended the Small Business Act to include section 8(m), which authorized the restriction of competition for Federal contracts in certain industries to EDWOSB concerns or WOSB concerns eligible under the WOSB Program. SBA published a final rule implementing the program on October 7, 2010 (75 FR 62258), which became effective February 4, 2011.

This interim rule provides the contracting community additional resources to meet the Government's procurement needs. The addition of FAR subpart 19.15 incorporates coverage of the Women-Owned Small Business Program. The rule defines "Women-Owned Small Business Program (WOSB Program)", "women-owned small business (WOSB) concern eligible under the WOSB Program", and "economically disadvantaged women-owned small business (EDWOSB) concern".

- To qualify as a WOSB concern eligible under the WOSB Program, the concern must be—

- A small business as defined in 13 CFR part 121 in its primary industry classification; and

- Not less than 51 percent directly and unconditionally owned by, and the management and daily operations controlled by, one or more women who are citizens of the United States.

- To qualify as an EDWOSB concern, the concern must be—

- A small business as defined in 13 CFR part 121 in its primary industry classification; and

- Not less than 51 percent directly and unconditionally owned by, and the management and daily operations controlled by, one or more women who are citizens of the United States and who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate certain income, asset, and other limitations established in SBA regulations.

Contracting officers may restrict competition in those industries where SBA has determined that WOSB concerns or EDWOSB concerns are underrepresented. For a North American Industry Classification System (NAICS) code in an underrepresented industry, the contracting officer may set aside for EDWOSB concerns. For a NAICS code

in a substantially underrepresented industry, the contracting officer may set aside for EDWOSB concerns, or set aside for WOSB concerns that are eligible under the WOSB Program. An EDWOSB concern is automatically an eligible WOSB concern.

The contracting officer must expect that two or more concerns will submit offers; contract award will be made at a fair and reasonable price; and the anticipated award price of the contract (including options) will not exceed \$6.5 million in the case of a contract assigned a NAICS code for manufacturing, or \$4 million, in the case of all other contracts. These figures are higher than the statute and SBA regulation figures because they are adjusted for inflation (see FAR 1.109).

The rule also provides a protest process and procedures for interested parties to challenge the size and status of a WOSB or EDWOSB concern. A protest of the size and status does not preclude the contracting officer from awarding the contract. The FAR allows for the contracting officer to award a contract after receipt of a protest if the contracting officer determines in writing that there is an immediate need or significant harm would result in the event the award is not made.

##### **II. Executive Order 12866 and 13563**

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD, GSA, and NASA determined that this rule is not excessively burdensome to the public, and is consistent with the SBA's Women-Owned Small Business Federal Contract Program.

##### **III. Regulatory Flexibility Act**

The change 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 this rule requires small business concerns that claim to be WOSB or EDWOSB concerns to demonstrate their status. However, this rule provides Federal agencies the tools to expand opportunities for women-owned small business concerns to compete for Federal contracts, thereby, creating a positive economic impact on WOSB concerns. SBA performed a Final Regulatory Flexibility Analysis, in its final rule published in the **Federal**

**Register** at 75 FR 62258, October 7, 2010, effective February 4, 2011. Based on SBA's recent analysis, it is anticipated that further analysis will not provide different data from the analysis performed by SBA. Therefore, SBA's data was used to support our analysis.

The Regulatory Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-51, FAR Case 2010-015) in correspondence.

The analysis is summarized as follows:

*1. What are the reasons for, and objectives of, this interim rule?*

DoD, GSA, and NASA are establishing procedures pursuant to the Small Business Reauthorization Act of 2000 (Pub. L. 106-554), enacted December 21, 2000. The purpose of the interim rule is to provide a tool for Federal agencies to ensure equal opportunity, and thereby increased Federal procurement opportunities to women-owned small business (WOSB) concerns. DoD, GSA, and NASA are implementing this interim rule pursuant to section 8(m) of the Small Business Act, 15 U.S.C. 637(m). These procedures will assist Federal agencies in eliminating barriers to the participation by WOSB concerns in Federal contracting, thereby achieving the Federal Government's goal of awarding five percent of Federal contract dollars to WOSB concerns, as provided in the Federal Acquisition Streamlining Act of 1994.

*2. What is the legal basis for this interim rule?*

On December 21, 2000, Congress enacted the Small Business Reauthorization Act of 2000 ("Act") (Pub. L. 106-554). Section 811 of Appendix I of the Act amended the Small Business Act to include section 8(m), which authorized the restriction of competition for Federal contracts in certain industries to economically disadvantaged women-owned small business (EDWOSB) concerns or WOSB concerns eligible under the WOSB Program. The Small Business Administration published its WOSB final rule in the **Federal Register** October 7, 2010 (75 FR 62258).

*3. What is the description and estimate of the number of small entities to which the rule will apply?*

This rule may positively affect EDWOSB concerns that participate in Federal

procurement in industries where SBA determines that WOSB concerns are underrepresented and may positively affect WOSB concerns eligible under the WOSB Program that participate in Federal procurement in industries where SBA determines that WOSB concerns are substantially underrepresented. In addition, the rule may negatively affect other small business concerns, as described below, to the extent that small business concerns not owned and controlled by women or non-eligible WOSB concerns may be excluded from competing for certain Federal contracting opportunities.

The 2002 Survey of Business Owners published by the U.S. Bureau of the Census reported 6,489,493 women-owned business concerns in the United States. More than 900,000 of these business concerns have one or more paid employees. Most women-owned business concerns, however, do not participate in the Federal contracting market.

In February 2006, SBA awarded a contract to the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) to complete a study of the underrepresentation of WOSB concerns in Federal prime contracts by industry code. The resulting study, "the RAND Report," was published in April 2007 and is available to the public at [http://www.RAND.org/pubs/technical\\_reports/TR442](http://www.RAND.org/pubs/technical_reports/TR442).

The Survey of Business Owners database used in the RAND Report represents all women-owned business (large and small) and only WOSB concerns are eligible under the regulations. As of January 21, 2007, approximately 93,000 business concerns represented themselves as WOSB concerns in the Federal Government's Central Contractor Registration (CCR) database as actual or potential Federal contractors. The study conducted by the RAND Corporation narrowed the pool of WOSB concerns in the CCR to approximately 56,000 to more closely approximate the universe of firms who are ready, willing, and able to do business with the Government. However, far fewer than 56,000 WOSB concerns are likely to be affected by this interim rule because only those eligible WOSB concerns competing for contracts in the eligible industries could possibly receive contracts under the program. Utilizing the Federal Procurement Data System data set for the total number of WOSB concerns (identified by Dun and Bradstreet DUNS number) that received obligated funds from awards, contracts, orders, and modifications to existing contracts for FY 2005, it was identified that approximately 12,000 WOSB concerns were recipients of Federal contracts in the 83 NAICS codes that would be eligible under the WOSB Program. Thus, this rule may affect approximately 12,000 WOSB concerns.

In addition, WOSB concerns that are not economically disadvantaged could be affected only to the extent that they compete for Federal contracts in industries in which WOSB concerns are determined to be substantially underrepresented. For industries in which WOSB concerns are determined to be substantially underrepresented, the potential number of WOSB concerns that could be direct

beneficiaries of these procedures restricting certain Federal contracts to WOSB concerns is also likely to be much fewer than the number of WOSB concerns registered in CCR, since not all WOSB concerns will satisfy the eligibility requirements for EDWOSB status. The CCR currently lists only approximately 3,800 small disadvantaged business (SDB) concerns owned and controlled by one or more women. This is a useful statistic because the \$750,000 net worth requirement is the same for SDB concerns and for EDWOSB concerns. While DoD, GSA, and NASA acknowledge that there may be other WOSB concerns in existence besides those listed in the CCR as being certified by SBA as SDB concerns, it is difficult to envision more than 6,000 WOSB concerns that could meet SBA's eligibility criteria and that are also ready, willing, and able to bid on Government contracts.

Moreover, the anticipated benefits of these procedures may be less attractive to many WOSB concerns than a number of other preferences designed to assist small business concerns, such as the HUBZone, 8(a), and other programs. Not all areas of Federal procurement have been designated as underrepresented or substantially underrepresented, and opportunities in some of the qualified industries may be limited. Consequently, many otherwise-qualified EDWOSB and WOSB concerns may not find it advantageous to pursue contract opportunities under these procedures.

DoD, GSA, and NASA determined that this rule will also negatively affect non-WOSB concerns (small business concerns not 51 percent owned and controlled by women) or women-owned small business concerns that are not eligible under the WOSB Program that are seeking Federal contracts for which competition has been restricted to participants in these procedures. This could affect the number of future contracts for those business concerns that derive a significant portion of their business from Federal contracting. To the extent that contracting officers use these procedures, non-WOSB concerns or non-eligible WOSB concerns may be excluded from competing for certain Federal contracting opportunities. However, this would occur only in industries in which WOSB concerns have been found to be underrepresented or substantially underrepresented, thus receiving fewer contracts than would be expected absent discrimination in the marketplace, and where the anticipated dollar value of the procurement does not exceed \$4 million or \$6.5 million, in the case of manufacturing contracts. In addition, we note that industries in which WOSB concerns are underrepresented are ones in which they have gotten less than their fair share of contracts and this suggests, at least implicitly, that non-WOSB concerns have therefore been getting more than the share they would receive in the absence of discrimination, and the ongoing effects of past discrimination. The number of small business concerns that would be excluded from eligibility for competing for contracts designated for the program under these procurements or from future such determinations is not known at this time.

Contracting opportunities identified by Federal agencies as candidates to be set aside for WOSB concerns will come from new contracting requirements and contracts currently performed by small and large business concerns. At this time, DoD, GSA, and NASA cannot accurately predict how the existing distribution of contracts by business type may change with this rule. However, DoD, GSA, and NASA do not expect a great many of the contracts awarded through the 8(a), HUBZone, or SDVOSB programs (\$22.6 billion in FY 2006) to be re-competed as WOSB or EDWOSB set-aside contracts because those programs also support other statutory goals that agencies strive to achieve through their contracting activities. It is acknowledged, however, that some redistribution of contracts among the various programs may occur as a result of these procedures.

*4. What are the projected reporting, recordkeeping, Paperwork Reduction Act and other compliance requirements?*

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, DoD, GSA, and NASA determined that the rule imposes new reporting and recordkeeping requirements. The certification process described in 13 CFR subpart C, 127.300 to 127.302, is an information collection. The certification process requires a concern seeking to benefit from Federal contracting opportunities designated for WOSB or EDWOSB concerns to verify its status by providing documents to the WOSB Program Repository, submitting a certification to the WOSB Program Repository, and representing its status in an existing electronic contracting system (*i.e.*, ORCA). The WOSB or EDWOSB concern will have to represent in ORCA that it meets each eligibility requirement of the program.

Specifically, the WOSB or EDWOSB concern will be required to submit certain documents verifying eligibility at the time of certification in ORCA (and every year thereafter). These documents will be submitted to a document repository established by SBA. Further, the protest and eligibility examination procedures will require the submission of documents from those parties subject to a protest and eligibility examination. To reduce the burden on the WOSB or EDWOSB concerns, the same documents submitted at the time of certification will be used for the protests and eligibility examinations, except that for protests and eligibility examinations, SBA will also request copies of proposals submitted in response to a WOSB or EDWOSB solicitation and certain other documents and information to verify the status of an EDWOSB concern.

Finally, this rule also requires the WOSB concerns or EDWOSB concerns to retain copies of the documents submitted for a period of six years. DoD, GSA, and NASA believe that any additional burden imposed by this recordkeeping requirement would be minimal since the firms would maintain the information in their general course of business.

*5. What relevant federal rules may duplicate, overlap, or conflict with this rule?*

None.

*6. What significant alternatives were considered that accomplish the stated objectives and minimize any significant economic impact on small entities?*

DoD, GSA, and NASA minimized the significant economic impact on small entities. Pursuant to section 8(m) of the Small Business Act, a WOSB concern may be certified by a Federal agency, a State government, or a national certifying entity approved by the SBA; or a WOSB concern may self-certify to the contracting officer that it is a small business concern owned and controlled by women, along with adequate documentation in accordance with standards established by SBA. As discussed earlier, EDWOSB and WOSB concerns are allowed to self-certify their status in CCR and ORCA databases or provide evidence of certification from an approved third-party certifier. Therefore, although there may be some overlap, the addition of the set-aside mechanism for WOSB concerns should complement rather than conflict with the goals of existing set-aside programs.

An alternative approach would have been to require EDWOSB and WOSB concerns to apply for formal certification. This alternative approach was ruled out as unnecessary, not required by statute, and too costly. DoD, GSA, and NASA believe that eligibility examinations and protest procedures incorporated into this interim rule will minimize the likelihood of fraud and misrepresentation of WOSB and EDWOSB status. DoD, GSA, and NASA have decided that allowing self-certification and the option for firms to apply for certification from SBA-approved certifiers, when combined with random eligibility examinations and a formal protest procedure, is a more viable approach than formal certification and greatly reduces the burden on small entities.

In addition, DoD, GSA, and NASA estimate that implementation of this interim rule will require no additional proposal costs for WOSB concerns, as compared to submitting proposals under any other small business set-aside preferences. Moreover, WOSB concerns currently represent their status for purposes of data collection that is needed to implement 15 U.S.C. 644(g); therefore, the self-certification process of this interim rule imposes no additional requirement on WOSB concerns.

#### IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because this interim rule contains information collection requirements. A request for approval on a new information collection requirement was submitted by SBA and approved by the Office of Management and Budget (OMB Control Number 3245-0374). Based on the annual reporting burden estimates provided by SBA, it was determined that additional estimates would not

produce different data. As a result, a request for approval on a new information collection requirement for FAR Case 2010-015 was not submitted to OMB. It was determined that the information collection requirement concerning FAR Case 2010-015 will be covered under SBA's OMB Control Number 3245-0374, Certification for the Women-Owned Small Business Federal Contract Program.

#### V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 8(m) of the Small Business Reauthorization Act of 2000 (Pub. L. 106-554) (15 U.S.C. 637(m)), authorizes Federal contracting officers to restrict competition for Federal contracts in certain industries to EDWOSB concerns or WOSB concerns eligible under the WOSB Program. Further, SBA published a final rule implementing the Women-Owned Small Business Federal Contract Program on October 7, 2010 (75 FR 62258), which went into effect February 4, 2011. This rule must be immediately incorporated into the FAR to ensure Governmentwide application. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

#### List of Subjects in 48 CFR Parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53

Government procurement.

Dated: March 24, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide Acquisition Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 13, 14, 15, 18, 19, 26, 33, 36, 42, 52, and 53 continues to read as follows:

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

**PART 2—DEFINITIONS OF WORDS AND TERMS**

- 2. Amend section 2.101 in paragraph (b)(2) by—
- a. Adding, in alphabetical order, the definition “economically disadvantaged women-owned small business (EDWOSB) concern”;
- b. Revising the definition “women-owned small business concern”; and
- c. Adding, in alphabetical order, the definition “Women-Owned Small Business (WOSB) Program”.

The added and revised text reads as follows:

**2.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

*Economically disadvantaged women-owned small business (EDWOSB) concern*—(see definition of *Women-Owned Small Business (WOSB) Program* in this section).

\* \* \* \* \*

*Women-owned small business concern* means—

- (1) A small business concern—
- (i) That 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; or
- (2) A small business concern eligible under the Women-Owned Small Business Program in accordance with 13 CFR part 127 (see subpart 19.15).

*Women-Owned Small Business (WOSB) Program.* (1) *Women-Owned Small Business Program (WOSB Program)* means a program that authorizes contracting officers to limit competition to—

- (i) Eligible economically disadvantaged women-owned small business concerns for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and
- (ii) Eligible WOSB concerns eligible under the WOSB Program for Federal contracts assigned a NAICS code in an industry in which SBA has determined that WOSB concerns are substantially underrepresented.

(2) *Economically disadvantaged women-owned small business (EDWOSB) concern* means a small business concern that is at least 51 percent directly and unconditionally

owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

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

\* \* \* \* \*

**PART 4—ADMINISTRATIVE MATTERS**

- 3. Amend section 4.803 by revising paragraph (a)(6); and adding paragraph (a)(42) to read as follows:

**4.803 Contents of contract files.**

- (a) \* \* \*
- (6) Set-aside decision including the type and extent of market research conducted.

\* \* \* \* \*

(42) When limiting competition to women-owned small business (WOSB) concerns or economically disadvantaged women-owned small business (EDWOSB) concerns in accordance with subpart 19.15, include documentation—

- (i) Of the type and extent of market research; and
- (ii) That the NAICS code assigned to the acquisition is for an industry that SBA has designated as—
- (A) Underrepresented for economically disadvantaged women-owned small business set-asides, or
- (B) Substantially underrepresented for women-owned small business set-asides.

\* \* \* \* \*

**PART 6—COMPETITION REQUIREMENTS**

**6.207 [Redesignated 6.208]**

- 4. Redesignate section 6.207 as section 6.208, and add new section 6.207 to read as follows:

**6.207 Set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.**

- (a) To fulfill the statutory requirements relating to 15 U.S.C. 637(m), contracting officers may set aside solicitations for only EDWOSB

concerns or WOSB concerns eligible under the WOSB Program (see 19.1505).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for EDWOSB concerns or WOSB concerns eligible under the WOSB Program.

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

- 5. Amend section 13.003 by revising paragraph (b)(2) to read as follows:

**13.003 Policy.**

\* \* \* \* \*

(2) The contracting officer may make an award to a small business under the 8(a) Program (see subpart 19.8), or set aside for HUBZone small business concerns (see 19.1305), service-disabled veteran-owned small business concerns (see 19.1405), or economically disadvantaged women-owned small business (EDWOSB) concerns and woman-owned small business (WOSB) concerns eligible under the WOSB Program (see 19.1505), an acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and at or below the simplified acquisition threshold. The following contracting officer’s decisions for acquisitions at or below the simplified acquisition threshold are not subject to review under subpart 19.4:

- (i) A decision not to make an award under the 8(a) Program (see subpart 19.8).
- (ii) A decision not to set aside an acquisition for HUBZone small business concerns, service-disabled veteran-owned small business concerns, or EDWOSB concerns and WOSB concerns eligible under the WOSB Program.

\* \* \* \* \*

- 6. Amend section 13.102 by removing from the introductory text of paragraph (a) “(see Subpart 4.11)” and adding “(see subpart 4.11)” in its place; and revising paragraph (a)(3) to read as follows:

**13.102 Source List.**

- (a) \* \* \*
- (3) Women-owned small business concern, including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Woman-owned Small Business (WOSB) Program.

\* \* \* \* \*

**PART 14—SEALED BIDDING**

- 7. Amend section 14.502 by redesignating paragraph (b)(7) as (b)(8);

and adding a new paragraph (b)(7) to read as follows:

**14.502 Conditions for use.**

\* \* \* \* \*

(b) \* \* \*

(7) The use of a set-aside for economically disadvantaged woman-owned small business concerns and women-owned small business concerns eligible under the Woman-Owned Small Business Program (see subpart 19.15).

\* \* \* \* \*

**PART 15—CONTRACTING BY NEGOTIATION**

■ 8. Amend section 15.503 in paragraph (a)(2) by—

- a. Removing from the end of paragraph (a)(2)(i)(C) the word “or”;
- b. Removing from the end of paragraph (a)(2)(i)(D) “19.1405.” and adding “19.1405; or” in its place;
- c. Adding paragraph (a)(2)(i)(E); and
- d. Revising paragraph (a)(2)(ii)(C).

The added and revised text reads as follows:

**15.503 Notifications to unsuccessful offerors.**

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(E) When using the Woman-Owned Small Business Program procedures in 19.1505.

(ii) \* \* \*

(C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful offeror (e.g., small business concern, small disadvantaged business concern, HUBZone small business concern, service-disabled veteran-owned small business concern, economically disadvantaged women-owned small business concern, or women-owned small business concern eligible under the Women-Owned Small Business Program).

\* \* \* \* \*

**PART 18—EMERGENCY ACQUISITIONS**

**18.117 through 18.126 [Redesignated as 18.118 through 18.127]**

■ 9. Redesignate sections 18.117 through 18.126 as sections 18.118 through 18.127, respectively; and add a new section 18.117 to read as follows:

**18.117 Awards to economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.**

Contracts may be awarded to EDWOSB concerns and WOSB concerns

on a competitive basis. (See subpart 19.15.)

**18.203 [Amended]**

■ 10. Amend section 18.203 by removing from paragraph (a) “(See 6.207” and adding “(See 6.208” in its place.

**PART 19—SMALL BUSINESS PROGRAMS**

■ 11. Amend section 19.000 by revising paragraph (a)(3) to read as follows:

**19.000 Scope of part**

(a) \* \* \*

(3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program;

\* \* \* \* \*

■ 12. Amend section 19.201 by revising paragraph (d)(10) to read as follows:

**19.201 General policy.**

\* \* \* \* \*

(d) \* \* \*

(10) 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, under subpart 19.13 as a HUBZone set-aside, under subpart 19.14 as a service-disabled veteran-owned small business set-aside, or under subpart 19.15 as an economically disadvantaged women-owned small business (EDWOSB) or women-owned small business (WOSB) set-aside.

\* \* \* \* \*

**19.202 [Amended]**

■ 13. Amend section 19.202 by removing “19.13 or 19.14” and adding “19.13, 19.14, or 19.15” in its place.

■ 14. Amend section 19.202–5 by revising paragraph (a) 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, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, women-owned small business,

EDWOSB concern, or WOSB concern eligible under the WOSB Program (see the provision at 52.219–1, Small Business Program Representations).

\* \* \* \* \*

■ 15. Amend section 19.202–6 by—

- a. Removing from the end of paragraph (a)(4) the word “and”;
- b. Removing from paragraph (a)(5) “(see Subpart 19.14).” and adding “(see subpart 19.14); and” in its place; and
- c. Adding paragraph (a)(6) to read as follows:

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

(a) \* \* \*

(6) Set-asides for EDWOSB concerns and WOSB concerns eligible under the WOSB Program (see subpart 19.15).

\* \* \* \* \*

■ 16. Amend section 19.203 by—

- a. Revising paragraph (a);
- b. Removing from paragraph (b) “or SDVOSB Program” and adding “SDVOSB Program, or WOSB Program” in its place;
- c. Removing from paragraph (c) “or SDVOSB programs” and adding “SDVOSB, or WOSB programs” in its place.

**19.203 Relationship among small business programs.**

(a) There is no order of precedence among the 8(a) Program (subpart 19.8), HUBZone Program (subpart 19.13), Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14), or the Women-Owned Small Business (WOSB) Program (subpart 19.15).

\* \* \* \* \*

■ 17. Amend section 19.301–1 by revising the third sentence of paragraph (d) to read as follows:

**19.301–1 Representation by the offeror.**

\* \* \* \* \*

(d) \* \* \* The SBA’s regulations on penalties for misrepresentations and false statements are contained in 13 CFR 121.108 for small business, 13 CFR 124.501 for 8(a) small business, 13 CFR 124.1004 for small disadvantaged business, 13 CFR 125.29 for veteran or service-disabled veteran-owned small business, 13 CFR 126.900 for HUBZone small business, and 13 CFR 127.700 for economically disadvantaged women-owned small business concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.

**19.308 [Redesignated as 19.309]**

■ 18. Redesignate section 19.308 as section 19.309; and add a new section 19.308 to read as follows:

**19.308 Protesting a firm's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.**

(a) An offeror, the contracting officer, or the SBA may protest the apparent successful offeror's status as an EDWOSB concern or WOSB concern eligible under the WOSB Program.

(b) Protests relating to small business size status are subject to the procedures of subpart 19.3. An interested party (*see* 19.308(a)) seeking to protest both the size and status of an apparent successful offeror shall file two separate protests.

(c) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens; or

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women, when it is in connection with an EDWOSB contract.

(2) SBA shall consider protests by a contracting officer when the apparent successful offeror has failed to provide all of the required documents, as set forth in FAR 19.1503(c).

(d) Protest by an offeror.

(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by the close of business by the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(e)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to (202) 205-6390, Attn: Women-owned Small Business Status Protest. SBA's protest regulations are found in subpart F "Protests" at 13 CFR 127.600 through 127.605.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to

allow SBA to determine timeliness and standing of the protest:

(i) The solicitation number; the name, address, telephone number and facsimile number of the contracting officer, the successful offeror and the protester.

(ii) Whether the protestor submitted an offer.

(iii) Whether the protested concern was the apparent successful offeror.

(iv) When the protested concern submitted its offer.

(v) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vi) The bid opening date, if applicable.

(vii) The date the contracting officer received the protest.

(viii) The date the protestor received notification about the apparent successful offeror, if applicable; and

(ix) Whether a contract has been awarded.

(f) SBA will notify the protester and the contracting officer of the date the protest was received.

(g) *Before SBA decision.* The contracting officer may award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest.

(1) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time that the contracting officer may grant SBA.

(2) If SBA does not issue its determination within 15 business days, the contracting officer shall contact SBA to obtain the status of its decision.

(3) After contacting SBA, if the contracting officer determines in writing that there is an immediate need and it is in the public's interest to proceed with award, the contracting officer may award the contract. This determination shall be provided to the SBA Director for Government Contracting and a copy shall be included in the contract file.

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

(1) If SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then—

(i) The concern must remove its designation in the Central Contractor Registration (CCR) and Online Representations and Certifications Application (ORCA) as an EDWOSB or WOSB concern, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(ii) The contracting officer shall not award the contract to the protested concern.

(iii) The contracting officer shall terminate the award, shall not exercise any options or award further task or delivery orders, if the contracting officer receives the determination after contract award.

(iv) The contracting officer may allow contract performance to continue when a written determination is made in accordance with 19.308(g) and (h), but shall not exercise any options or award further task or delivery orders.

(v) The contracting officer shall update the FPDS to reflect the final SBA decision.

(3) If SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then—

(i) The contracting officer must consider whether performance can be suspended until an OHA decision is rendered.

(ii) The contracting officer shall either terminate the contract, not exercise the next option, or not award further task or delivery orders, if OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible. The contracting officer may allow contract performance to continue when a written determination is made in accordance with 19.308(g) and (h), but shall not exercise any options or award further task or delivery orders; and

(iii) The contracting officer shall update the FPDS to reflect OHA's decision.

(iv) The concern must remove its designation in CCR and ORCA as an EDWOSB or WOSB concern, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

■ 19. Amend section 19.402 by revising paragraphs (c)(1)(i) and (ii) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

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

(ii) New qualified small business sources, including veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, economically disadvantaged women-owned small, and women-owned small eligible under the Woman-Owned Small Business Program; and

\* \* \* \* \*

■ 20. Amend section 19.501 by revising the second sentence in paragraph (c) to read as follows:

**19.501 General.**

\* \* \* \* \*

(c) \* \* \* The contracting officer shall perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless an award is anticipated to a small business under the 8(a), HUBZone, service-disabled veteran-owned, or WOSB programs. \* \* \*

\* \* \* \* \*

■ 21. Amend section 19.804–2 by revising paragraph (a)(9) to read as follows:

**19.804–2 Agency offering.**

(a) \* \* \*

(9) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business, HUBZone, service-disabled veteran-owned small business set-aside, or a set-aside under the Women-Owned Small Business (WOSB) Program, and that no other public communication (such as a notice through the Governmentwide point of entry (GPE)) has been made showing the contracting agency's clear intention to set-aside the acquisition for small business, HUBZone small business, service-disabled veteran-owned small business concerns, or a set-aside under the WOSB Program.

\* \* \* \* \*

■ 22. Amend section 19.1202–2 by revising paragraph (b)(1) to read as follows:

**19.1202–2 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(1) Small business set-asides (see subpart 19.5), HUBZone set-asides (see subpart 19.13), service-disabled veteran-owned small business set-asides (see

subpart 19.14), economically disadvantaged women-owned small business set-asides, and set-asides for women-owned small business concerns eligible under the Women-Owned Small Business Program (see subpart 19.15).

\* \* \* \* \*

■ 23. Add subpart 19.15 to read as follows:

**Subpart 19.15—Women-Owned Small Business (WOSB) Program**

Sec.

19.1500 General.

19.1501 Definition.

19.1502 Applicability.

19.1503 Status.

19.1504 Exclusions

19.1505 Set-aside procedures.

19.1506 Contract clauses.

**Subpart 19.15—Women-Owned Small Business (WOSB) Program****19.1500 General.**

(a) Section 8(m) of the Small Business Act (15 U.S.C. 637(m)) created the Women-Owned Small Business (WOSB) Program.

(b) The purpose of the WOSB Program is to ensure women-owned small business concerns have an equal opportunity to participate in Federal contracting and to assist agencies in achieving their WOSB participation goals (see 13 CFR part 127).

**19.1501 Definition.**

*WOSB Program Repository* means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

**19.1502 Applicability.**

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

**19.1503 Status.**

(a) Status as an economically disadvantaged women-owned small business (EDWOSB) or WOSB concern is determined in accordance with 13 CFR part 127.

(b) The contracting officer shall verify that the offeror—

(1) Is registered in Central Contractor Registration (CCR);

(2) Is self-certified in the Online Representation and Certifications Application (ORCA); and

(3) Has submitted documents verifying its eligibility at the time of initial offer to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c)(1) An EDWOSB or WOSB concern that has been certified by an SBA approved third party certifier, (which includes SBA certification under the 8(a) Program), must provide the following eligibility requirement documents—

(i) The third-party certification; (ii) SBA's WOSB Program Certification form (SBA Form 2413); and (iii) The joint venture agreement, if applicable.

(2) An EDWOSB or WOSB concern that has not been certified by an SBA approved third party certifier or by SBA under the 8(a) Program, must provide the following documents:

(i) The U.S. birth certificate, naturalization documentation, or unexpired U.S. passport for each woman owner.

(ii) The joint venture agreement, if applicable.

(iii) For limited liability companies, Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments, and the operating agreement and any amendments.

(iv) For corporations, articles of incorporation and any amendments, by-laws and any amendments, all issued stock certificates, including the front and back copies, signed in accord with the by-laws, stock ledger, and voting agreements, if any.

(v) For partnerships, the partnership agreement and any amendments.

(vi) For sole proprietorships, corporations, limited liability companies and partnerships if applicable, the assumed/fictitious name certificate(s).

(vii) SBA's WOSB Program Certification form (SBA Form 2413).

(viii) For EDWOSB concerns, in addition to the above, the SBA Form 413, Personal Financial Statement, available to the public at <http://www.sba.gov/tools/Forms/index.html>, for each woman claiming economic disadvantage.

(d)(1) A contracting officer may accept a concern's self-certification as accurate for a specific procurement reserved for award under this subpart if—

(i) The apparent successful WOSB or EDWOSB offeror provided the required documents;

(ii) There has been no protest or other credible information that calls into question the concern's eligibility as an EDWOSB or WOSB concern; and

(iii) There has been no decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB or WOSB concern at the time it submitted its initial offer for an EDWOSB or WOSB requirement.

(2) The contracting officer shall file a status protest in accordance with FAR 19.308 if—

(i) There is information that questions the eligibility of a concern; or

(ii) The concern fails to provide all of the required documents to verify its eligibility.

(e) If there is a decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB or WOSB concern, the contracting officer may terminate the contract, and shall not exercise any option nor award further task or delivery orders. The contracting officer shall not count or include the award toward the small business accomplishments for an EDWOSB or WOSB concern and must update FPDS from the date of award.

(f) A joint venture may be considered an EDWOSB concern or WOSB concern if it meets the requirements of 13 CFR 127.506.

(g) An EDWOSB or WOSB concern that is a non-manufacturer, as defined in 13 CFR 121.406(b), may submit an offer on an EDWOSB or WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in that regulation.

#### 19.1504 Exclusions.

This subpart does not apply to—

(a) Requirements that an 8(a) concern is currently performing under the 8(a) Program or that 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;

(b) 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);

(c) Orders against indefinite delivery contracts (see subpart 16.5); or

(d) Orders against Federal Supply Schedules (see subpart 8.4).

#### 19.1505 Set-aside procedures.

(a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB or WOSB concerns eligible under the WOSB Program in those NAICS codes in which SBA has determined that women-owned small business concerns are underrepresented or substantially underrepresented in Federal procurement, as specified on SBA's Web site at <http://www.sba.gov/WOSB>.

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that—

(1) Two or more EDWOSB concerns will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing; or \$4 million, for all other contracts; and

(3) Contract award will be made at a fair and reasonable price.

(c) A contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), for requirements in NAICS codes designated by SBA as substantially underrepresented if there is a reasonable expectation based on market research that—

(1) Two or more WOSB concerns (including EDWOSB concerns), will submit offers;

(2) The anticipated award price of the contract (including options) will not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing, or \$4 million for all other contracts; and

(3) Contract award may be made at a fair and reasonable price.

(d) The contracting officer may make an award, if only one acceptable offer is received from a qualified EDWOSB or WOSB concern.

(e) The contracting officer must check whether the apparently successful offeror filed all the required eligibility documents, and file a status protest if any documents are missing. *See* 19.1503(d)(2).

(f) If no acceptable offers are received from an EDWOSB or WOSB concern, the set-aside shall be withdrawn and the requirement, if still valid, must be considered for set aside in accordance with 19.203 and subpart 19.5.

(g) If the contracting officer rejects a recommendation by SBA's Procurement Center Representative—

(1) The contracting officer shall notify the procurement center representative as soon as practicable;

(2) SBA shall notify the contracting officer of its intent to appeal the contracting officer's decision no later than five business days after receiving notice of the contracting officer's decision;

(3) The contracting officer shall suspend further action regarding the procurement until the head of the agency issues a written decision on the appeal, that there are urgent and

compelling circumstances which significantly affect the interests of the United States compel award of the contract;

(4) Within 15 business days of SBA's notification to the head of the contracting activity, SBA shall file a formal appeal to the head of the agency, or the appeal will be determined withdrawn; and

(5) The head of the agency, or designee, shall specify in writing the reasons for a denial of an appeal brought under this section.

#### 19.1506 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–29, Notice of Total Set-Aside for Economically Disadvantaged Women-owned Small Business (EDWOSB) Concerns, in solicitations and contracts for acquisitions that are set aside for economically disadvantaged women-owned small business concerns under 19.1505(b).

(b) The contracting officer shall insert the clause 52.219–30, Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside for women-owned small business concerns under 19.1505(c).

## PART 26—OTHER SOCIOECONOMIC PROGRAMS

### 26.202–1 [Amended]

■ 24. Amend section 26.202–1 introductory text by removing “(see 6.207)” and adding “(see 6.208)” in its place.

## PART 33—PROTEST, DISPUTES, AND APPEALS

■ 25. Amend section 33.102 by revising the last sentence of paragraph (a) to read as follows:

### 33.102 General.

(a) \* \* \* (See 19.302 for protests of small business status, 19.305 for protests of disadvantaged business status, 19.306 for protests of HUBZone small business status, and 19.307 for protests of service-disabled veteran-owned small business status, and 19.308 for protests of the status of an economically disadvantaged women-owned small business concern or of a women-owned small business concern eligible under the Women-Owned Small Business Program.)

\* \* \* \* \*

**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS****36.501 [Amended]**

■ 26. Amend section 36.501 by removing from the first sentence of paragraph (b) “or 19.14” and adding “19.14, or 19.15” in its place.

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

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

**42.501 General.**

\* \* \* \* \*

(b) Postaward orientation is encouraged to assist (see part 19)—

- (1) Small business concerns;
- (2) Small disadvantaged business concerns;
- (3) Veteran-owned small business concerns;
- (4) Service-disabled veteran-owned small business concerns;
- (5) HUBZone small business concerns; and
- (6) Women-owned small business concerns (including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program).

\* \* \* \* \*

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

■ 28. Amend section 52.212–3 by—

- a. Revising the date of the clause;
- b. Adding in paragraph (a), in alphabetical order, the definitions “economically disadvantaged women-owned small business (EDWOSB) concern” and “women-owned small business (WOSB) concern eligible under the WOSB Program”;
- c. Redesignating paragraphs (c)(6), (c)(7), (c)(8), and (c)(9) as paragraphs (c)(8), (c)(9), (c)(10), and (c)(11), respectively;
- d. Adding new paragraphs (c)(6) and (c)(7);
- e. Removing from the “Note” “(c)(6) and (c)(7)” and adding “(c)(8) and (9)” in its place and revising its heading to read “Note to paragraphs (c)(8) and (9)”;
- f. Removing from the newly redesignated paragraph (c)(10)(i)(A) “in the database” and adding “in the CCR Dynamic Small Business Search database” in its place; and removing the words “(PRO–Net)”;
- g. Removing from the newly redesignated paragraph (c)(10)(ii) “in paragraph (c)(8)(i)” and adding “in paragraph (c)(10)(i)” in its place;

- h. Removing from the newly redesignated paragraph (c)(11)(ii) “in paragraph (c)(9)(i)” and adding “in paragraph (c)(11)(i)” in its place;
- i. Revising the date of Alternate I and the introductory text; redesignating paragraph (10) as paragraph (12); and removing from the newly redesignated paragraph (12) “or (c)(8)” and adding “or (c)(10)” in its place; and
- j. Revising the date of Alternate II and the introductory text.

The added and revised text to read as follows:

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

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (APR 2011)**

(a) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(c) \* \* \*

(6) WOSB concern eligible under the WOSB Program. [*Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.*] The offeror represents that—

- (i) It \* is, \* is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and
  - (ii) It \* is, \* is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate in reference to the WOSB concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the WOSB concern or concerns that are participating in the joint venture: .*] Each WOSB concern participating in the joint venture shall submit a separate signed copy of the WOSB representation.
- (7) Economically disadvantaged women-owned small business (EDWOSB) concern. [*Complete only if the offeror represented*

*itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.*] The offeror represents that—

- (i) It \* is, \* is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and
- (ii) It \* is, \* is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(ii) of this provision is accurate in reference to the EDWOSB concern or concerns that are participating in the joint venture. The offeror shall enter the name or names of the EDWOSB concern or concerns that are participating in the joint venture: \_\_\_\_\_. Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

\* \* \* \* \*

Alternate I (APR 2011). As prescribed in 12.301(b)(2), add the following paragraph (c)(12) to the basic provision:

\* \* \* \* \*

Alternate II (APR 2011). As prescribed in 12.301(b)(2), add the following paragraph (c)(10)(iii) to the basic provision:

\* \* \* \* \*

- 29. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Redesignating paragraphs (b)(21) through (b)(46) as paragraphs (b)(23) through (b)(48); and
- c. Adding new paragraphs (b)(21) and (b)(22)

The revised and added text reads 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 (APR 2011)**

\* \* \* \* \*

- (b) \* \* \*
- \_\_\_\_ (21) 52.219–29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (APR 2011).
- \_\_\_\_ (22) 52.219–30 Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (APR 2011).

\* \* \* \* \*

- 30. Amend section 52.219–1 by—
- a. Removing from the introductory paragraph “19.308(a)(1)” and adding “19.309(a)(1)” in its place;
- b. Revising the date of the provision;
- c. Redesignating paragraphs (b)(4) through (b)(6) as paragraphs (b)(6) through (b)(8);
- d. Adding new paragraphs (b)(4) and (b)(5);
- e. Removing from newly redesignated (b)(7) “in paragraph (b)(4)” and adding “in paragraph (b)(6)” in its place;

- f. Removing from newly redesignated (b)(8) “in paragraph (b)(6)” and adding “in paragraph (b)(8)” in its place;
- g. Adding in paragraph (c), in alphabetical order, the definitions “economically disadvantaged women-owned small business (EDWOSB) concern” and “women-owned small business (WOSB) concern eligible under the WOSB Program”;
- h. Revising paragraph (d)(2);
- i. Revising the date of Alternate I, and removing from the introductory paragraph “the following paragraph (b)(7)” and adding “the following paragraph (b)(9)” in its place; and
- j. Redesignating Alternate I paragraph (7) as paragraph (9).

#### 52.219–1 Small Business Program Representations.

\* \* \* \* \*

#### Small Business Program Representations (APR 2011)

\* \* \* \* \*

(b) \* \* \*

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (b)(3) of this provision.] The offeror represents as part of its offer that—

(i) It \* is, \* is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It \* is, \* is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(4)(i) of this provision is accurate in reference to the WOSB concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern or concerns that are participating in the joint venture: \_\_\_\_.] Each WOSB concern participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (b)(4) of this provision.] The offeror represents as part of its offer that—

(i) It \* is, \* is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It \* is, \* is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(5)(i) of this provision is accurate in reference to the EDWOSB concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern or concerns that are participating in the joint venture:

\_\_\_\_.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(d) \* \* \*

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm’s status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

\* \* \* \* \*

Alternate I (APR 2011). \* \* \*

\* \* \* \* \*

#### 52.219–2 [Amended]

- 31. Amend section 52.219–2 by removing from the introductory paragraph “19.308(c)” and adding “19.309(c)” in its place.

#### 52.219–22 [Amended]

- 32. Amend section 52.219–22 by—
- a. Removing from the introductory paragraph “19.308(b)” and adding “19.309(b)” in its place; and
- b. Removing from Alternate I “(Oct 1998)” and adding “(APR 2011)”; and removing text “19.307(b)” and adding “19.309(b)” in its place.

#### 52.219–28 [Amended]

- 33. Amend section 52.219–28 by removing from the introductory paragraph “19.308(d)” and adding “19.309(d)” in its place;
- 34. Add sections 52.219–29 and 52.219–30 to read as follows:

#### 52.219–29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.

As prescribed in 19.1506, insert the following clause:

#### Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (APR 2011)

(a) *Definitions. Economically disadvantaged women-owned small business (EDWOSB) concern* means—

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

*WOSB Program Repository* means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *General.* (1) Offers are solicited only from EDWOSB concerns. Offers received from concerns that are not EDWOSB concerns will not be considered.

(2) Any award resulting from this solicitation will be made to an EDWOSB concern.

(3) The contracting officer will ensure that the EDWOSB concern has provided all required documents to the WOSB Program Repository. The contract will not be awarded until all required documents are received.

(c) *Agreement.* An EDWOSB concern agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(d) *Joint Venture.* A joint venture may be considered an EDWOSB concern if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The EDWOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and

the Online Representations and Certifications Application (ORCA) as an EDWOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating an EDWOSB concern as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB contract performed by the joint venture.

(4) The joint venture performs the applicable percentage of work required in accordance with paragraph (c) above; and

(5) The procuring activity executes the contract in the name of the EDWOSB or joint venture.

(e) *Nonmanufacturer.* An EDWOSB that is a non-manufacturer, as defined in 13 CFR 121.406(b) or FAR 19.102(f), may submit an offer on an EDWOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

**52.219–30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.**

As prescribed in 19.1506, insert the following clause:

**Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (APR 2011)**

(a) *Definitions.* *Women-owned small business (WOSB) concern eligible under the*

*WOSB Program* (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

*WOSB Program Repository* means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

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

(2) Any award resulting from this solicitation will be made to a WOSB.

(3) The contracting officer will ensure that the WOSB has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c) *Agreement.* A WOSB agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).

(d) *Joint Venture.* A joint venture may be considered a WOSB if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The WOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and the Online Representations and Certifications Application (ORCA) as a WOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating a WOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.

(4) The joint venture must perform the applicable percentage of work required in accordance with paragraph (c) above; and

(5) The procuring activity executes the contract in the name of the WOSB or joint venture.

(e) *Nonmanufacturer.* A WOSB that is a non-manufacturer, as defined in 13 CFR 121.406(b) or FAR 19.102(f), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

**PART 53—FORMS**

■ 35. Revise section 53.301–1447 to read as follows:

**53.301–1447 Solicitation/Contract.**

**BILLING CODE 6820–EP–P**

<b>SOLICITATION/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27				

2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. SOLICITATION NUMBER	5. SOLICITATION TYPE <input type="checkbox"/> SEALED BIDS (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	6. SOLICITATION ISSUE DATE
-----------------	-------------------------	------------------------	--	----------------------------

7. ISSUED BY CODE	8. THIS ACQUISITION IS	<input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR:	
	<input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS    NAICS: <input type="checkbox"/> 8(A)    SIZE STANDARD:		

9. (AGENCY USE)

10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION)  
 SUPPLIES     SERVICES

11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.	12. ADMINISTERED BY CODE
---	-----------------------------

13. CONTRACTOR OFFEROR CODE    FACILITY CODE	14. PAYMENT WILL BE MADE BY CODE
---	-------------------------------------

TELEPHONE NUMBER \_\_\_\_\_ DUNS NUMBER \_\_\_\_\_

CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

15. PROMPT PAYMENT DISCOUNT	16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10 U.S.C. 2304 <input type="checkbox"/> 41 U.S.C. 253 (    )    (    )
-----------------------------	--

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA	24. TOTAL AWARD AMOUNT (FOR GOVERNMENT USE ONLY)
---------------------------------------	--

25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.	26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:
---	---

27. SIGNATURE OF OFFEROR/CONTRACTOR	28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)
-------------------------------------	---

NAME AND TITLE OF SIGNER (TYPE OR PRINT)	DATE SIGNED	NAME OF CONTRACTING OFFICER	DATE SIGNED
--	-------------	-----------------------------	-------------

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

STANDARD FORM 1447 (REV. 3/2011) **BACK**

■ 36. Revise section 53.301-1449 to read as follows:

**53.301-1449 Solicitation/Contract/Order for Commercial Items.**

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

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

32a. QUANTITY IN COLUMN 21 HAS BEEN  
 RECEIVED     INSPECTED     ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

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

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

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

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

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

STANDARD FORM 1449 (REV. 1/2011) BACK

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

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

AUTHORIZED FOR LOCAL REPRODUCTION  
PREVIOUS EDITION NOT USABLE

**OPTIONAL FORM 347** (REV. 1/2011)  
Prescribed by GSA/FAR 48 CFR 53.213(f)

**SUPPLEMENTAL INVOICING INFORMATION**

If desired, this order (or a copy thereof) may be used by the Contractor as the Contractor's invoice, instead of a separate invoice, provided the following statement, (signed and dated) is on (or attached to) the order: "Payment is requested in the amount of \$ \_\_\_\_\_. No other invoice will be submitted." However, if the Contractor wishes to submit an invoice, the following information must be provided: contract number (if any), order number, item number(s), description of supplies or service, sizes, quantities, unit prices, and extended totals. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed \$10 (except for parcel post), the billing must be supported by a bill of lading or receipt. When several orders are invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

**RECEIVING REPORT**

Quantity in the "Quantity Accepted" column on the face of this order has been:  inspected,  accepted,  received by me and conforms to contract. Items listed below have been rejected for the reasons indicated.

SHIPMENT NUMBER	PARTIAL	DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T REP.	DATE
	FINAL			
TOTAL CONTAINERS	GROSS WEIGHT	RECEIVED AT	TITLE	

**REPORT OF REJECTIONS**

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 53

[FAC 2005-51; FAR Case 2009-029; Item II; Docket 2010-0096, Sequence 1]

RIN 9000-AL72

#### Federal Acquisition Regulation; Clarification of Standard Form 26— Award/Contract

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to include clarifications to Standard Form (SF) 26, Award/Contract. This revised form includes changes above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract.

**DATES:** *Effective Date:* May 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-51, FAR Case 2009-029.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 75 FR 54560 on September 8, 2010, to clarify the use of blocks 17 and 18 of the Standard Form (SF) 26, Award/Contract.

FAR 53.214(a) prescribes the SF 26 for use in contracting for supplies and services by sealed bidding (except for construction and architect-engineer services). The SF 26 is used to award sealed bid contracts after obtaining bids using a SF 33, Solicitation, Offer, and Award. FAR 14.408-1(d)(1) specifies that, if an offer made using a SF 33 leads to further changes, the resulting contract must be prepared as a bilateral document using the SF 26. Agencies identified instances in which contracting officers mistakenly checked block 18 when awarding negotiated, not sealed bid contracts, which created the potential for disputes between the agency and contractors. The clarifications provided on the form for when to use blocks 17 and 18 should eliminate this issue.

The changes will not prevent contracting officers from using block 17 of the SF 26 to award negotiated procurements; it will clarify to contracting officers the proper use of block 17 and block 18 and prohibit the use of block 18 of the SF 26 when awarding negotiated procurements. This final rule clarifies the use of block 18 on the SF 26, Award/Contract, and references the new form at FAR 53.214(a) and 53.215-1(a).

No respondents submitted comments on the proposed rule.

##### II. Executive Order 12866 and 13563

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD, GSA, and NASA determined that this rule is not excessively burdensome to the public, and is consistent with FAR drafting conventions.

##### III. 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 it is solely a clarification for the benefit of Government contracting officers and does not make any substantive changes to current policy.

##### IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

##### List of Subjects in 48 CFR Part 53

Government procurement.

Dated: March 24, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide Acquisition Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 53 as set forth below:

##### PART 53—FORMS

- 1. The authority citation for 48 CFR part 53 continues to read as follows:

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

##### 53.214 [Amended]

- 2. Amend section 53.214 by removing from paragraph (a) “*SF 26 (APR 2008)*” and adding “*SF 26 (Rev. 5/2011)*” in its place.

##### 53.215-1 [Amended]

- 3. Amend section 53.215-1 by removing from paragraph (a) “*SF 26 (APR 2008)*” and adding “*SF 26 (Rev. 5/2011)*” in its place.

- 4. Revise section 53.301-26 to read as follows:

##### 53.301-26 Award/Contract.

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