

rule is not a major rule under 5 U.S.C. 804.

### VII. Executive Order 13771

Pursuant to E.O. 13771, this rule is a deregulatory action. Information on the expected cost savings of this action can be found in section III of the preamble.

### VIII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

### IX. Paperwork Reduction Act

The 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 16

Government procurement.

Dated: April 25, 2018.

#### William F. Clark,

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA are amending 48 CFR part 16 as set forth below:

#### PART 16—TYPES OF CONTRACTS

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

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

■ 2. Amend section 16.505 by revising paragraph (a)(10) to read as follows:

#### 16.505 Ordering.

(a) \* \* \*

(10)(i) No protest under subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except—

(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(B)(1) For agencies other than DoD, NASA, and the Coast Guard, a protest of an order valued in excess of \$10 million (41 U.S.C. 4106(f)); or

(2) For DoD, NASA, or the Coast Guard, a protest of an order valued in excess of \$25 million (10 U.S.C. 2304c(e)).

(ii) Protests of orders in excess of the thresholds stated in 16.505(a)(10)(i)(B) may only be filed with the Government Accountability Office, in accordance with the procedures at 33.104.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 19

[FAC 2005-98; FAR Case 2017-008: Item II; Docket No. 2017-0008; Sequence No. 1]

RIN 9000-AN36

#### Federal Acquisition Regulation: Duties of Office of Small and Disadvantaged Business Utilization

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to reflect sections of the National Defense Authorization Act for Fiscal Year 2017, which amend section 15(k) of the Small Business Act to provide additional duties for agencies' Office of Small and Disadvantaged Business Utilization (OSDBU), and for DoD's Office of Small Business Programs (OSBP).

**DATES:** *Effective:* May 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet Fry, Procurement Analyst, at 703-605-3167 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-98, FAR Case 2017-008.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA are amending the FAR to reflect sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328), which amend the Small Business Act to provide additional duties for OSDBUs. By operation of 10 U.S.C. 144(b), these additional duties also apply to OSBPs. Section 1812, paragraph (a) of section 1813, and paragraph (b) of section 1821 of the NDAA for FY 2017 amend section 15(k)

of the Small Business Act to add duties for OSDBUs and OSBPs.

Section 1812 of the NDAA for FY 2017 amends the Small Business Act to specifically reference the existing duties of OSDBUs and OSBPs with respect to the various small business programs and consolidation of contract requirements. Section 1812 also requires that OSDBUs and OSBPs review summary purchase card data for acquisitions above the micro-purchase threshold (*e.g.*, \$3,500), but below the simplified acquisition threshold (*e.g.*, \$150,000), to ensure these acquisitions are compliant with the Small Business Act and have been properly recorded in the Federal Procurement Data System (FPDS). The revision to the FAR reflecting section 1812 of the NDAA includes flexibility for each OSDBU or OSBP to identify the best purchase card data available to their agency when implementing the statutory requirement.

Paragraph (a) of section 1813 requires OSDBUs and OSBPs to provide assistance to a small business prime contractor or subcontractor in finding resources for education and training on compliance with the FAR after award of their contract or subcontract.

Paragraph (b) of section 1821 requires OSDBUs and OSBPs to review all required small business subcontracting plans to ensure that they provide maximum practicable opportunity for small business concerns to participate as subcontractors.

Currently, acquisition-related duties of OSDBUs and OSBPs are found in FAR 19.201, General policy. The duties found in FAR 19.201 are based on the duties found in section 15(k) of the Small Business Act (15 U.S.C. 644(k)). Additional OSDBU and OSBP acquisition-related duties enacted before the NDAA for FY 2017 listed at 15 U.S.C. 644(k), which were not previously updated in the FAR, are also included in this rule.

Additionally, this rule revises the OSDBU and OSBP duty at FAR 19.201(c)(5), which relates to increasing small business participation in solicitations that involve bundling. This revision reflects that OSDBUs and OSBPs perform much broader functions under those scenarios than what is currently listed in the FAR.

##### II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy,

regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. While this final rule relates to the expenditure of appropriated funds, it is not required to be published for public comment because it does not have a significant effect or impose any requirements on contractors or offerors; the rule only provides information to contracting officers. This information affects only the internal operating procedures of the Government.

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

This rule amends FAR 19.201, General policy. The objective of the rule is to update the list of duties for OSDBUs and OSBPs in line with section 15(k) of the Small Business Act. No clauses or provisions are being created or revised by this rule.

### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### V. Executive Order 13771

This rule is exempt under E.O. 13771 as it is related to agency organization, management, or personnel.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C.

1707(a)(1) (see section II. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

### VII. Paperwork Reduction Act

The 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 19

Government procurement.

Dated: April 25, 2018.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

### PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for part 19 continues to read as follows:

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

■ 2. Amend section 19.201 by revising paragraph (c) to read as follows.

#### 19.201 General policy.

\* \* \* \* \*

(c) The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (see section 15(k) of the Small Business Act). For the Department of Defense, in accordance with section 904 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163) (10 U.S.C. 144 note), the Office of Small and Disadvantaged Business Utilization has been redesignated as the Office of Small Business Programs. Management of the office is the responsibility of an officer or employee of the agency who, in carrying out the purposes of the Act—

(1) Is known as the Director of Small and Disadvantaged Business Utilization, or for the Department of Defense, the Director of Small Business Programs;

(2) Is appointed by the agency head;

(3) Is responsible to and reports directly to the agency head or the deputy to the agency head;

(4) Is responsible for the agency carrying out the functions and duties in sections 8, 15, 31, 36, and 44 of the Small Business Act;

(5) Works with the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)(2)) to identify

proposed solicitations that involve bundling and work with the agency acquisition officials and SBA to revise the acquisition strategies for such proposed solicitations to increase the probability of participation by small businesses;

(6) Assists small business concerns in obtaining payments under their contracts, late payment interest penalties, or information on contractual payment provisions;

(7) Has supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15, 31, 36, and 44 of the Small Business Act;

(8) Assigns a small business technical advisor to each contracting activity within the agency to which the SBA has assigned a representative (see 19.402)—

(i) Who is a full-time employee of the contracting activity, well qualified, technically trained, and familiar with the supplies or services contracted for by the activity; and

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8, 15, 31, 36, and 44 of the Small Business Act;

(9) Cooperates and consults on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8, 15, 31, 36, and 44 of the Small Business Act;

(10) Makes 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 a set-aside for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program;

(11) Conducts annual reviews to assess the—

(i) Extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act;

(ii) Adequacy of consolidated or bundled contract documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified consolidation or bundling on small businesses;

(12) Provides a copy of the assessment made under paragraph (c)(11) of this section to the Agency Head and SBA Administrator;

(13) Provides to the chief acquisition officer and senior procurement executive advice and comments on acquisition strategies, market research, and justifications related to consolidation of contract requirements;

(14) When notified by a small business concern prior to the award of a contract that the small business concern believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business concern to compete for the award—

(i) Submits the notification by the small business concern to the contracting officer and, if necessary, recommends ways in which the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition; and

(ii) Informs the advocate for competition of such agency (as established under 41 U.S.C 1705 or 10 U.S.C. 2318) of such notification;

(15) Ensures agency purchases using the Governmentwide purchase card that are greater than the micro-purchase threshold and less than the simplified acquisition threshold were made in compliance with the Small Business Act and were properly recorded in accordance with subpart 4.6 in the Federal Procurement Data System;

(16) Assists small business contractors and subcontractors in finding resources for education and training on compliance with contracting regulations;

(17) Reviews all subcontracting plans required by 19.702(a) to ensure the plan provides maximum practicable opportunity for small business concerns to participate in the performance of the contract; and

(18) Performs other duties listed at 15 U.S.C. 644(k).

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 22 and 52

[FAC 2005-98; FAR Case 2017-004; Item III; Docket No. 2017-0004, Sequence No. 1]

RIN 9000-AN37

#### Federal Acquisition Regulation: Liquidated Damages Rate Adjustment

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

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to adjust for inflation the rate of liquidated damages assessed for violations of the overtime provisions of the Contract Work Hours and Safety Standards Act.

**DATES:** *Effective:* May 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-98, FAR Case 2017-004.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the Department of Labor (DOL) interim final rule published in the **Federal Register** at 81 FR 43430 on July 1, 2016, the final rule published in the **Federal Register** at 82 FR 5373 on January 18, 2017, and subsequent adjustments for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) (section 701 of Pub. L. 114-74) (28 U.S.C. 2461 Note). The Inflation Adjustment Act requires agencies to adjust the levels of civil monetary penalties for inflation no later than January 15 of each year.

##### II. Discussion and Analysis

The DOL rule set the new rate of liquidated damages at \$25 per individual for each calendar day on which a laborer or mechanic employed

under a contract or subcontract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act was required or permitted to work in excess of the standard workweek of 40 hours without payment of the required overtime wages. Since this rate will continue to change annually for inflation, FAR 22.302, Liquidated Damages and Overtime Pay, and paragraph (b) of FAR clause 52.222-4, Contract Work Hours and Safety Standards—Overtime Compensation, are revised to reference the current liquidated damages rate, as specified in the DOL regulations at 29 CFR 5.5(b)(2). With this reference being incorporated in lieu of the dollar amount, an annual FAR change will not be necessary.

#### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the FAR to refer to the rate of liquidated damages for violations of the overtime provisions of the Contract Work Hours and Safety Standards Act, in accordance with DOL regulations, rather than provide a specific dollar rate, because this rate is adjusted annually. The revisions do not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to commercial items.

#### IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this final FAR rule merely implements the requirements of the DOL rule that was published for comment—interim final rule published in the **Federal Register** at 81 FR 43430 on July 1, 2016, and the final rule published in the **Federal Register** at 82 FR 5373 on January 18, 2017. The new