

- a. Revising the date of the clause to read "(JAN 2006)";
- b. In paragraph (a), in the definition "Designated country" by removing from paragraph (2) "Morocco,"; and
- c. In Alternate I by—
- 1. Revising the date of Alternate I to read "(JAN 2006)";
- 2. Removing from the introductory paragraph " , Chilean, or Moroccan" and adding "or Chilean" in its place;
- 3. Removing from the definition "Australian, Chilean, or Moroccan construction material" " , Chilean, or Moroccan" and adding "or Chilean" in its place; and in paragraphs (1) and (2) by removing " , Chile, or Morocco" and adding "or Chile" in its place; and
- 4. Removing from paragraph (b)(1) "and Australian, Chilean, and Moroccan" and adding " , Australian or Chilean" in its place; and by removing from paragraph (b)(2) " , Chilean, or Moroccan" and adding "or Chilean" in its place.

52.225-12 [Amended]

- 11. Amend section 52.225-12 by revising the date of Alternate II to read "(JAN 2006)"; and by removing from paragraphs (a), (d)(1) twice, and (d)(3) twice " , Chilean, or Moroccan" and adding "or Chilean" in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 12, 19, and 52

[FAC 2005-07; FAR Case 2005-013; Item V]

RIN 9000-AK36

Federal Acquisition Regulation; Deletion of the Very Small Business Pilot Program

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set-aside for very small

business concerns certain acquisitions with an anticipated dollar value between \$2,500 and \$50,000. The Councils removed the FAR provisions because the legislative authority for the program terminated on September 30, 2003.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044. Please cite FAC 2005-07, FAR case 2005-013. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Very Small Business Pilot Program was established by Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103-403). Very small business concern means a small business concern whose headquarters is located within the geographic area served by a designated SBA district and which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million. The purpose of the program was to improve access to Government contract opportunities for concerns that were substantially below the Small Business Administration's size standards by reserving certain acquisitions for competition among such concerns. The Councils are removing the FAR provisions because the legislative authority for the program terminated on September 30, 2003.

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.

B. Regulatory Flexibility Act

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

The Very Small Business Pilot Program was established by section 304 of Public Law 103-403, codified as a Note to the Small Business Act, "15 USC 644 Note" and was extended by Section 503 of Public Law 106-554 until September 30, 2003. The program has expired. Therefore, the Federal Acquisition Regulation is amended to reserve Subpart 19.9, Very Small Business Pilot Program, and delete other references to the program throughout the FAR. The changes will have an economic impact on a small number of small entities within the meaning

of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the law required contracting officers to set-aside for very small business concerns acquisitions with an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 if the contracting office is located within the geographical area served by a designated SBA district (for supplies), or in the case of an acquisition for services, the contract will be performed within the geographical area served by a designated SBA district; and there is a reasonable expectation of obtaining offers from two or more responsible very small business concerns in the designated areas.

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

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 5, 12, 19, and 52

Government procurement.

Dated: December 22, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 12, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 12, 19, and 52 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 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Amended]

■ 2. Amend section 5.207 by removing paragraph (c)(18) and redesignating paragraph (c)(19) as (c)(18); and by removing from paragraph (d) "very small business set-aside,".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.303 [Amended]

■ 3. Amend section 12.303 by removing from paragraph (b)(1) " , or set-aside for very small business concerns".

PART 19—SMALL BUSINESS PROGRAMS

19.000 [Amended]

■ 4. Amend section 19.000 by removing from paragraph (a)(10) "The Very Small

Business Pilot Program;" and adding "[Reserved]" in its place.

19.001 [Amended]

■ 5. Amend section 19.001 by removing the definition "Very small business concern".

19.102 [Amended]

■ 6. Amend section 19.102 by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

19.502-2 [Amended]

■ 7. Amend section 19.502-2 by removing from the first sentence of paragraph (a) "Except for those acquisitions set aside for very small business concerns (see Subpart 19.9), each" and adding "Each" in its place.

Subpart 19.9—[Removed]

■ 8. Subpart 19.9 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(4) of the clause to read as follows:

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

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CONTRACT TERMS AND CONDITIONS
REQUIRED TO IMPLEMENT STATUTES OR
EXECUTIVE ORDERS—COMMERCIAL
ITEMS (JAN 2006)

* * * * *

(b) * * *

(4) [Removed]

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52.219-5 [Removed]

■ 10. Section 52.219-5 is removed and reserved.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 19, 25, 42, and 52

[FAC 2005-07; FAR Case 2003-023; Item VI]

RIN 9000-AJ91

Federal Acquisition Regulation; Purchases From Federal Prison Industries—Requirement for Market Research

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency.

DATES: *Effective Date:* January 3, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. The TTY Federal Relay Number for further information is 1-800-877-8973. Please cite FAC 2005-07, FAR case 2003-023. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Public Law 108-447) provides that none of the funds made available under that or any other Act for fiscal year 2005 and each fiscal year thereafter shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc. (FPI), unless the agency making the purchase determines that the offered product or service provides

the best value to the buying agency pursuant to Governmentwide procurement regulations issued pursuant to 41 U.S.C. 421(c)(1) that impose procedures, standards, and limitations of 10 U.S.C. 2410n. Section 637 of Division F of the Consolidated Appropriations Act, 2004 (Public Law 108-199), contained a similar requirement that applied only to fiscal year 2004 funds.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 18954, April 11, 2005, with a request for comments. Five respondents submitted comments. A discussion of the comments is provided below. As a result of comment 1 below, the final rule contains changes at FAR 8.602 to clarify that the requirements of the rule do not apply to items for which FPI has eliminated its mandatory source status.

1. *Comment:* In the preamble to the interim rule published on April 11, 2005, the response to Comment 3 states that, if an agency chooses to make a purchase at or below \$2,500 from FPI, the agency must first conduct market research to comply with Section 637 of Public Law 108-447. This is inconsistent with the statement under SUPPLEMENTARY INFORMATION that FAR 8.602(b) (market research) does not apply to the purchase of any service or item of supply that FPI has been authorized by its Board of Directors to offer exclusively on a competitive (non-mandatory) basis. Since the FPI Board of Directors has eliminated its mandatory source status for purchases of \$2,500 or less, it would logically follow that purchases from FPI up to \$2,500 should also be exempt from market research requirements.

Councils' response: The Councils agree that the rule should provide equal treatment for all items for which FPI has eliminated its mandatory source status. The final rule amends FAR 8.602 to state that its procedures do not apply to the "non-mandatory" items identified in FAR 8.605(b)-(g). These items, therefore, will be acquired using the policies and procedures otherwise specified in the FAR.

2. *Comment:* There appears to be confusion as to whether the requirement for market research applies to services as well as supplies provided by FPI. This confusion stems from the inclusion of FPI as a mandatory source at FAR 8.002(a), which applies to both supplies and services.

Councils' response: FPI is not a mandatory source for services and, therefore, market research in accordance with FAR 8.602(b) is not required for services, as indicated at FAR 8.602(c). This is consistent with the order of