

the Small Business Act at 15 U.S.C. 637(d)(11) to authorize certain costs incurred by mentor firms under the DOD Pilot Mentor-Protégé Program to be credited toward subcontracting goals for awards to small disadvantaged businesses. This rule also further implements Section 831(f)(2) of Public Law 101-510, which permits mentor firms to award subcontracts on a noncompetitive basis to its Protégés under DOD or other contracts. An interim rule was published in the Federal Register on January 26, 1996 (61 FR 2637). One comment was received in response to the interim rule. As a result, in the second sentence of 19.702(d), the word "firms" was revised to read "Protégé agreement", and the address and telephone number were corrected. The clause at 52.244-5 is adopted as final without change.

#### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to participants in the DOD Pilot Mentor-Protégé Program. Presently, approximately 100 mentor firms and 240 protégé firms are enrolled in the program.

#### C. Paperwork Reduction Act

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

#### List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Accordingly, the interim rule amending 48 CFR Parts 19 and 52 and published at 61 FR 2637, January 26, 1996, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

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

### PART 19—SMALL BUSINESS PROGRAMS

2. Section 19.702 is amended by revising the last sentence of paragraph (d) to read as follows:

#### § 19.702 Statutory requirement.

\* \* \* \* \*

(d) \* \* \* However, the mentor-Protégé agreement must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs) DUSD(I&CP)SADBU, Room 2A338, 3061 Defense Pentagon, Washington, DC 20301-3061, (703) 697-9383, before developmental assistance costs may be credited against subcontract goals.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### § 52.244-5 [Amended]

3. The clause date for 52.244-5 is revised to read "(DEC 1996)".

[FR Doc. 96-32006 Filed 12-19-96; 8:45 am]

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#### 48 CFR Parts 19 and 52

[FAC 90-43, FAR Case 95-028, Item VII]  
RIN 9000-AH34

#### Federal Acquisition Regulation; Minority Small Business and Capital Ownership

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

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

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule that amends the Federal Acquisition Regulation (FAR) to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) Program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** *Effective Date:* December 20, 1996.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the

address shown below on or before February 18, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-43, FAR case 95-028, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 95-028.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On June 7, 1995, SBA published changes in their regulations at 13 CFR Parts 121 and 124, which cover the Minority Small Business and Capital Ownership Development Program (60 FR 29969). As a result of these modifications, the FAR has some inconsistencies regarding who is eligible for a particular 8(a) procurement. Amended FAR sections include: 19.801, 19.804-2, 19.804-3, 19.805-1, 19.805-2, 19.808-1, 19.809, 19.811-1, 19.811-3, 52.219-1, 52.219-11 (Alternate I), 52.219-12 (Alternate I), 52.219-17, and 52.219-18 (Alternate II).

##### B. Regulatory Flexibility Act

This interim rule is not expected to 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.* This rule does not impose any new requirements on contractors. The rule amends the FAR to reflect changes at 13 CFR 121 and 124 designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on Program Participants. The FAR is changed to eliminate inconsistencies with respect to who is eligible for particular 8(a) procurements; to eliminate obsolete definitions; and to eliminate coverage on certain aspects of the 8(a) program that are obsolete. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C.

601, *et seq.* (FAR case 95-028), in correspondence.

#### C. Paperwork Reduction Act

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

#### D. 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 in order to implement the changes in the Small Business Administration (SBA) Minority Small Business and Capital Ownership Development Program that are applicable for all 8(a) requirements accepted by the SBA on or after August 7, 1995. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formulation of the final rule.

#### List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

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

### PART 19—SMALL BUSINESS PROGRAMS

#### 19.801 [Reserved]

2. Section 19.801 is removed and reserved.

3. Section 19.804-2 is amended by revising paragraph (b) and adding (c) to read as follows:

#### 19.804-2 Agency offering.

\* \* \* \* \*

(b)(1) An agency offering a construction requirement should submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be sent to SBA Headquarters, Office of Minority and Capital Ownership Development, 409 3rd Street, SW, Washington, DC 20416.

(c) In order to ensure consistency and uniformity, all requirements for 8(a) competition shall be offered to and processed by the Division of Business Development, SBA Headquarters. All requirements, including construction, shall be synopsisized in the Commerce Business Daily by the cognizant procuring agency. For construction, the synopsis shall include the geographical area of the competition as determined by the Assistant Administrator, Division of Business Development, in consultation with the local SBA district office where the work is to be performed.

#### 19.804-3 [Amended]

4. Section 19.804-3 is amended by removing paragraph (c).

5. Section 19.805-1 is amended by redesignating paragraph (c) as (d) and revising the last sentence, and by adding a new paragraph (c). The added and revised text reads as follows:

#### 19.805-1 General.

\* \* \* \* \*

(c) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order to use 8(a) sole source procedures for award to a single firm.

(d) \* \* \* Agency recommendations for competition below the threshold may be included in the offering letter or may be submitted by separate correspondence to the SBA Headquarters.

6. Section 19.805-2 is amended by revising the introductory text of paragraph (c) to read as follows:

#### 19.805-2 Procedures.

\* \* \* \* \*

(c) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria.

\* \* \* \* \*

7. Section 19.808-1(b) is revised to read as follows:

#### 19.808-1 Sole source.

\* \* \* \* \*

(b) The SBA should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award.

8. Section 19.809 is amended by revising the fourth sentence to read as follows:

#### 19.809 Preaward considerations.

\* \* \* Within 15 working days of the receipt of the referral or a longer period agreed to by the SBA and the contracting activity, the SBA local district office that services the 8(a) firm will advise the contracting officer as to the SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. \* \* \*

#### 19.811-1 [Amended]

9. Section 19.811-1 is amended by removing paragraph (b)(5).

10. Section 19.811-3 is amended by revising paragraphs (a), (b), and (d)(1); by removing (d)(2); and by redesignating (d)(3) as (d)(2), and in newly-designated (d)(2) by revising "Alternate III" to read "Alternate II". The revised text reads as follows:

#### 19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

\* \* \* \* \*

(d) \* \* \*

(1) The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to 19.804-2.

\* \* \* \* \*

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.219-1 is amended by revising the provision date, and in paragraph (c) by adding, in alphabetical order, the definition for "Joint venture" to read as follows:

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

\* \* \* \* \*

**SMALL BUSINESS PROGRAM REPRESENTATIONS (DEC 1996)**

\* \* \* \* \*

(c) *Definitions. Joint venture*, for purposes of a small disadvantaged business (SDB) set-aside or price evaluation preference (as prescribed at 13 CFR 124.321), is a concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more business concerns and is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract. The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture. The percentage of the ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

\* \* \* \* \*

(End of provision)

**52.219-11 [Amended]**

12. Section 52.219-11 is amended by removing Alternate I.

**52.219-12 [Amended]**

13. Section 52.219-12 is amended by removing Alternate I.

14. Section 52.219-17 is amended by revising the clause date and by adding paragraphs (a)(5) and (c) to read as follows:

**52.219-17 Section 8(a) Award.**

\* \* \* \* \*

**SECTION 8(a) AWARD (DEC 1996)**

(a) \* \* \*

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

\* \* \* \* \*

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the \_\_\_\_\_ [insert name of contracting agency].

(End of clause)

**52.219-18 [Amended]**

15. Section 52.219-18 is amended by removing Alternate II and by redesignating Alternate III as Alternate II.

[FR Doc. 96-32007 Filed 12-19-96; 8:45 am]

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**48 CFR Part 19**

[FAC 90-43; FAR Case 96-328; Item VIII]

RIN 9000-AH40

**Federal Acquisition Regulation; Extension of Small Business Competitiveness Demonstration 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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement Section 108 of the Small Business Programs Improvement Act of 1996 (Public Law 104-208, Division D). Section 108 extends the Small Business Competitiveness Demonstration Program (15 U.S.C. 644 note) until September 30, 1997. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** December 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Victoria Moss at (202) 501-4764 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 96-328.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule amends the FAR to extend the Small Business Competitiveness Demonstration Program through September 30, 1997. The program consists of two major components: a test of unrestricted competition in four designated industry groups, and a test of enhanced small business participation in 10 agency targeted industry categories. The rule implements section 108, Title I (Amendments to Small Business Administration Act), of Public Law 104-208. Section 108 was effective upon enactment (September 30, 1996).

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not

apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must cite 5 U.S.C. 601, *et seq.* (FAC 90-43, FAR case 96-328), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Part 19**

Government procurement.

Dated: December 11, 1996.

Edward C. Loeb,

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 19 is amended as set forth below:

**PART 19—SMALL BUSINESS PROGRAMS**

1. The authority citation for 48 CFR Part 19 continues to read as follows:

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

**19.1001 [Amended]**

2. Section 19.1001 is amended in the second sentence by revising the date "1996" to read "1997".

**19.1006 [Amended]**

3. Section 19.1006(b)(1) is amended by revising the date "1996" to read "1997".

[FR Doc. 96-32008 Filed 12-19-96; 8:45 am]

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**48 CFR Part 31**

[FAC 90-43; FAR Case 92-613; Item IX]

RIN 9000-AG85

**Federal Acquisition Regulation; Morale, Health, Welfare Costs/ Contractor Overhead Certification**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) cost principle for public relations and