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Dated: March 3, 2008.

Michael K. Buckley,
Deputy Assistant Administrator for
Mitigation, Department of Homeland
Security, Federal Emergency Management
Agency.

[FR Doc. E8-4633 Filed 3-7-08; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13 and 19

[FAR Case 2006-034; Docket 2007-0001;
Sequence 15]

RIN 9000-AK92

Federal Acquisition Regulation: FAR Case 2006-034, Socioeconomic Program Parity

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council
(Councils) are proposing to amend the
Federal Acquisition Regulation (FAR) to
ensure that the FAR reflects the Small
Business Administration's (SBA)
interpretation of the Small Business Act
and SBA regulations with regard to the
relationship among various small
business programs.

DATES: *Comment date:* Interested parties
should submit written comments to the
Regulatory Secretariat at the address
shown below on or before May 9, 2008,
to be considered in the formation of the
final rule.

ADDRESSES: Submit comments,
identified by FAR Case 2006-034, by
any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal
eRulemaking portal by inputting "FAR
Case 2006-034" under the heading
"Comment or Submission". Select the
link "Send a Comment or Submission"
that corresponds with FAR Case 2006-
034. Follow the instructions provided to
complete the "Public Comment and
Submission Form". Please include your
name, company name (if any), and
"FAR Case 2006-034" on your attached
document.

- *Fax:* 202-501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat
(VPR), 1800 F Street, NW., Room 4035,
ATTN: Diedra Wingate, Washington, DC
20405.

Instructions: Please submit comments
only and cite FAR case 2006-034 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: Ms.
Rhonda Cundiff, Procurement Analyst,
at (202) 501-0044 for clarification of
content. The FAR Secretariat at (202)
501-4755 for information pertaining to
status or publication schedules. Please
cite FAR case 2006-034.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to ensure
that the FAR clearly reflects SBA's
interpretation of the Small Business Act
and SBA's interpretation of its
regulations with regard to the order of
precedence that applies when deciding
whether to satisfy a requirement
through an award to a small business, a
HUBZone small business concern, a
service-disabled veteran-owned small
business (SDVOSB) concern or a small
business participating in the 8(a)
Business Development Program (8(a)
Program).

This FAR rule is intended to make the
following clear:

(1) There is no order of precedence
among the 8(a), HUBZone, or SDVOSB
Programs. However, if a requirement has
been accepted by SBA under the 8(a)
Program, it must remain in the 8(a)
Program unless SBA agrees to its release
in accordance with 13 CFR 124, 125 and
126.

(2) For acquisitions exceeding
\$100,000, the contracting officer must
consider making award under the 8(a),
HUBZone or SDVOSB Programs (either
set-aside or sole source) before the
contracting officer proceeds with a
small business set-aside. See 19.203(b)
and 19.502-2(b).

After having considered making
award under the 8(a), HUBZone or
SDVOSB Programs, the contracting
officer may set aside an acquisition for
small business, with one exception. By
statute (15 U.S.C. 657a(b)(2)(B)), the
contracting officer cannot set the
acquisition aside for small business if
the criteria for setting it aside for
HUBZone small business are met.

(3) FAR 19.502-2(a) sets forth the
requirement to exclusively reserve

acquisitions for small business between
\$3,000 and \$100,000 unless the
contracting officer determines there is
not a reasonable expectation of
obtaining offers from two or more small
businesses that are competitive in terms
of market prices, quality, and delivery.
This proposed rule clarifies that these
small business set-asides do not
preclude award of a contract to a
qualified HUBZone small business
concern pursuant to the HUBZone
Program, an 8(a) Program participant
pursuant to the 8(a) Program, or to a
SDVOSB concern pursuant to the
SDVOSB Program because the SBA's
regulations give the contracting officer
discretionary authority to use the
HUBZone, 8(a), or SDVOSB Programs at
these dollar levels. In addition, the rule
shows that, unlike procurements that
are expected to exceed \$100,000, it is
not mandatory that the contracting
officer set aside an acquisition for
HUBZone small business concerns
before setting aside the requirement for
small businesses.

(4) SBA believes that progress in
fulfilling the various small business
goals, as well as other factors such as
the results of market research and the
acquisition history, should be
considered in making a decision as to
which program to use for the
acquisition.

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

B. Regulatory Flexibility Act

This change may have a significant
economic impact on a significant
number of small entities within the
meaning of the Regulatory Flexibility
Act 5 U.S.C. 601, *et seq.*, because it will
clarify the relationship among various
small business programs with regard to
whether one has priority over another
for acquisition purposes. It has been
unclear to the acquisition community if
there is an order of precedence that
applies when deciding whether to
satisfy a requirement through an award
to small business, HUBZone small
business, service disabled veteran-
owned small business or a small
business participating in the 8(a)
Business Development Program. This
proposed rule will have both a negative
and positive impact on the 8(a) Business
Development Program, the HUBZone
Program, the Service-Disabled Veteran-
Owned Small Business Program and the
Small Business Program.

Viewed as a whole, there is no impact on the small business community, as this rule does not increase or decrease the number of contracts awarded to small businesses. However, there will be a negative impact on contractors with a particular preference who lose a contract set-aside to another socioeconomic category of contractors with a different preference who gain the contract set-aside, who thereby will receive a positive impact. The FAR 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 will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*, FAR Case 2006-034, in correspondence. The analysis is summarized as follows:

The purpose of this proposed rule is to revise the FAR to ensure that it complies with SBA's interpretation of the Small Business Act and the SBA regulations that implement that Act. The entities that will be affected are small businesses that do business with the Federal Government. Generally, all current and potential Government contractors must register in the Central Contractor Registration (CCR) to be eligible for contract award and payment. There are approximately 313,512 small business firms; 13,000 HUBZone firms; 9,947 8(a) firms and 9,614 SDVO SBC currently registered in CCR that may be affected by this proposed rule.

There are no significant alternatives that would reduce any impact on small businesses. The FAR rule is implementing SBA's interpretation of the Small Business Act and SBA's implementing regulations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does not apply because the proposed rule does not contain 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 13 and 19

Government procurement.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 13 and 19 as set forth below:

1. The authority citation for 48 CFR parts 13 and 19 continue 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 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Amend section 13.003 by revising the first sentence in paragraph (b)(2) to read as follows:

13.003 Policy.

* * * * *

(b) * * *

(2) The contracting officer may make an award under the 8(a) Program (see Subpart 19.8) or set aside for HUBZone small business concerns (see 19.1305) or service-disabled veteran-owned small business concerns (see 19.1405) an acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold. * * *

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PART 19—SMALL BUSINESS PROGRAMS

3. Amend section 19.202 by revising the first sentence to read as follows:

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subparts 19.5, 19.8, 19.13, or 19.14. * * *

4. Amend subpart 19.2 by adding section 19.203 to read as follows:

19.203 Relationship among small business programs.

(a) Acquisitions subject to the small business set-aside at 19.502-2(a).

The requirement to exclusively reserve acquisitions for small business at 19.502-2(a) does not preclude the contracting officer from awarding a contract under the—

(1) 8(a) Program (Subpart 19.8);

(2) HUBZone Program (Subpart

19.13); or

(3) Service-Disabled Veteran-Owned Small Business Procurement Program (SDVOSB)(Subpart 19.14).

(b) *Acquisitions subject to the small business set-aside at 19.502-2(b).* (1) The contracting officer must consider the 8(a), HUBZone, and SDVOSB programs before using a small business set-aside. There is no order of precedence among the 8(a), HUBZone, and SDVOSB programs. However, if a requirement has been accepted by SBA under the 8(a) Program, it must remain in the 8(a) Program unless SBA agrees to its release in accordance with 13 CFR 124, 125 and 126; and

(2) The contracting officer must set aside an acquisition for HUBZone small business concerns if the conditions at 19.1305 are met, before considering a small business set-aside.

5. Amend section 19.501 by—

a. Removing paragraphs (c) and (d);

b. Redesignating paragraphs (e), (f), (g), (h), and (i) as (c), (d), (e), (f), and (g), respectively; and

c. Revising the second sentence of new 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 under the 8(a), HUBZone or service-disabled veteran-owned small business programs. * * *

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6. Amend section 19.502-2 by adding a new first sentence and revising the last sentence in paragraph (a) and adding a new first sentence in paragraph (b) to read as follows:

19.502-2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(a). * * *. The small business reservation does not preclude the award of a contract as described in 19.203 or 19.1007(c).

(b) Before setting aside an acquisition under this paragraph, follow 19.203(b). * * *

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7. Amend section 19.800 by revising paragraph (e) to read as follows:

19.800 General.

* * * * *

(e) Before deciding to set aside an acquisition in accordance with Subpart 19.5, the contracting officer must consider offering the acquisition under the 8(a) Program (see 19.203).

* * * * *

8. Amend section 19.1305 by revising paragraphs (a) through (d) to read as follows:

19.1305 HUBZone set-aside procedures.

(a) The contracting officer—

(1) May set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied (see 19.203);

(2) Must set-aside acquisitions exceeding the simplified acquisition threshold for HUBZone small business

concerns before setting them aside for small business concerns or conducting the acquisition using full and open competition if the conditions in paragraph (b) of this section are met; and

(3) Must consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306).

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

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

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

(c) A contracting officer may set aside acquisitions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns at the sole

discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

(d) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn.

* * * * *

9. Amend section 19.1405 by revising paragraph (a) and the second sentence of paragraph (c) to read as follows:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer—

(1) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business

concerns when the requirements of paragraph (b) of this section can be satisfied (see 19.203); and

(2) Must consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406) or small business set-asides (see 19.5).

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(c) * * *. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn.

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19.1406 [Amended]

10. Amend introductory paragraph (a) by removing “19.501(d)” and adding “19.203” in its place.

[FR Doc. E8-4561 Filed 3-7-08; 8:45 am]

BILLING CODE 6820-EP-P