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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2005-75; FAR Case 2013-010; Item II; Docket 2013-0010, Sequence 1]

RIN 9000-AM59

Federal Acquisition Regulation; Contracting with Women-Owned Small Business Concerns

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to remove the dollar limitation for set-asides to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-Owned Small Business Program.

DATES: Effective date: [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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 2005-75, FAR Case 2013-010.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 78 FR 37692 on June 21, 2013, to implement section 1697 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Public Law 112-239), which amended section 8(m) of the Small Business Act, (15 U.S.C. 637(m)). Section 1697 of the NDAA for FY 2013 amended section 8(m) by removing the dollar limitation for set-asides to economically disadvantaged women-owned small business (EDWOSB) concerns, and eligible women-owned small business (WOSB) concerns (see 13 CFR 127.200-13 and 127.305 for eligibility and certification requirements), in industries determined by the Small Business Administration (SBA) to be underrepresented or substantially underrepresented by small business concerns owned and controlled by women, with respect to Federal procurement.

Pursuant to this statutory change and in conformance with the Small Business Administration's (SBA's) revised regulations at 13 CFR 127.503(a)(2) and 127.503(b)(2) (see

SBA's interim final rule published in the Federal Register at 78 FR 26504 on May 7, 2013), an interim FAR rule was published in the Federal Register at 78 FR 37692 on June 21, 2013, removing the dollar limitations for set-asides to EDWOSB concerns or WOSB concerns eligible under the WOSB Program. The interim rule allows contracting officers to set aside acquisitions for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program at any dollar level above the micro-purchase threshold, provided the other requirements for a set-aside under the WOSB Program are met.

II. Discussion and Analysis

The comment period for the FAR interim rule closed on August 20, 2013. No public comments were received; therefore DoD, GSA, and NASA are finalizing the interim rule without change.

III. 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.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The objective of this final rule is to finalize the changes set forth in section 1697 of the National Defense Authorization Act for fiscal year 2013. Section 1697 eliminated the statutory limitations (thresholds) at section 8(m) of the Small Business Act, (15 U.S.C. 637(m)), for set-asides to economically disadvantaged women-owned small business (EDWOSB) concerns and to women-owned small business (WOSB) concerns eligible under the WOSB Program in industries that are underrepresented or substantially underrepresented by WOSB concerns. This final rule follows an interim rule that was published in the Federal Register at 78 FR 37692 on June 21, 2013, which removed the set-aside limitations set forth at FAR 19.1505(b)(2) and (c)(2), in keeping with the statutory change and SBA's revised regulations.

There were no comments received in response to the interim rule by its closing date of August 20, 2013. Therefore, the changes made in the interim rule will be adopted as final, without change, allowing contracting officers to set aside acquisitions for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program at any dollar level above the micro-purchase threshold, provided the other requirements for a set-aside under the WOSB Program are met.

Analysis of the Federal Procurement Data System from April 1, 2011 (the implementation date of the

WOSB Program) through January 1, 2013, revealed that there were approximately 26,712 WOSB concerns, including 131 EDWOSB concerns and 388 WOSB concerns eligible under the WOSB Program, that received obligated funds from Federal contract awards, task or delivery orders, and modifications to existing contracts. This final rule may have a significant positive economic impact on EDWOSB concerns competing for contracting opportunities in industries determined by SBA to be underrepresented by WOSB concerns and may positively affect WOSB concerns eligible under the WOSB Program competing in industries determined by SBA to be substantially underrepresented by WOSB concerns, since removing the dollar threshold for set-asides under the WOSB Program will provide greater access to Federal contracting opportunities. However, this rule may have a negative effect on firms that are women-owned but are not WOSB Program participants and small businesses that are not owned by women because those firms may now be excluded from competition on some acquisitions that previously could not be set aside for EDWOSB concerns or WOSB concerns eligible under the WOSB Program due to the dollar thresholds and now will be set aside.

This final rule does not impose new recordkeeping or reporting requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no alternatives to the rule that would accomplish the stated objectives of the statute.

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

V. 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 19

Government procurement.

Dated: June 13, 2014.

William Clark,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

INTERIM RULE ADOPTED AS FINAL WITHOUT CHANGE

Accordingly, the interim rule amending 48 CFR part 19 which was published in the Federal Register at 78 FR 37692 on June 21, 2013, is adopted as a final rule without change.

[BILLING CODE 6820-EP]

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