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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 18, 19, and 52

[FAC 2005-91; FAR Case 2015-032; Item IV; Docket No. 2015-0032; Sequence No. 1]

RIN 9000-AN13

Federal Acquisition Regulation; Sole Source Contracts for Women-Owned Small Businesses

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with a minor edit, an interim rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) that provide for authority to award sole source contracts to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-Owned Small Business (WOSB) Program.

DATES: Effective: [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-91, FAR Case 2015-032.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 80 FR 81888 on December 31, 2015, to implement regulatory changes that the SBA has made in its final rule published in the Federal Register at 80 FR 55019, on September 14, 2015, concerning sole source award authority under the WOSB Program. SBA's final rule implements the statutory requirements of paragraph (a)(3) of section 825 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Public Law 113-291, granting contracting officers the authority to award sole source contracts to economically disadvantaged women-owned small business (EDWOSB) concerns and to WOSB concerns eligible under the WOSB Program. Four respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. All four respondents expressed support of the interim rule. Therefore, no further change to the interim rule is required as a result of the public comments, but there is a minor edit to 19.1505(a)(1).

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

This rule adopts as final the amendments to the FAR clauses at 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-owned Small Business Concerns, and 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in order to implement paragraph (a)(3) of section 825 of the NDAA for FY 2015. The Federal Acquisition Regulatory Council, pursuant to the authority granted in 41 U.S.C. 1905 and 1906, and the Administrator, Office of Federal Procurement Policy, pursuant to the authority granted in 41 U.S.C 1907, have determined that the application of this statutory authority to contracts at or below the simplified acquisition threshold and to contracts

for commercial items and commercially available off-the-shelf items, is in the best interests of the Federal Government.

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. 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:

This rule implements paragraph (a)(3) of section 825 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113-291, (Fiscal Year 2015 NDAA). Section 825 of the Fiscal

Year 2015 NDAA included language granting contracting officers the authority to award sole source contracts to Women-Owned Small Businesses (WOSBs) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) under the WOSB Program. The purpose of this rule is to finalize the procedures whereby Federal agencies may award sole source contracts to WOSBs and EDWOSBs eligible under the WOSB Program. The rule provides an additional tool for Federal agencies to ensure that WOSBs have an equal opportunity to participate in Federal contracting and ensures consistency among SBA's socioeconomic small business contracting programs.

The interim rule, published at 80 FR 81888, on December 31, 2015, put the WOSB Program on a level playing field with other SBA Government contracting programs with sole source authority and provided an additional, needed tool for agencies to meet the statutorily mandated goal of 5 percent of the total value of all prime contract and subcontract awards for WOSBs.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the interim rule.

This rule may have a positive economic impact on WOSB concerns. The Dynamic Small Business Supplemental Search (DSBS) lists approximately 41,500 firms as either WOSBs or EDWOSBs under the WOSB Program. An analysis of the Federal Procurement Data System from April 1, 2011 (the implementation date of the WOSB Program), through September 1, 2015, revealed that there were approximately 17,353 women-owned small business concerns that received obligated funds from Federal contract awards, task or delivery orders, and modifications to existing contracts, in an industry where a WOSB or EDWOSB sole source is authorized, and where the contract is valued at or below the thresholds for sole source contracts to WOSBs or EDWOSBs. Of those 17,353 women-owned small business concerns, 328 EDWOSBs and 974 WOSBs were eligible to participate in the WOSB Program (i.e., received set-asides under the WOSB Program), and could have received sole source awards. This rule could affect a smaller number of EDWOSBs and WOSBs than those eligible under the WOSB Program since the sole source authority can only be used where a contracting officer conducts market research in an industry where a WOSB or EDWOSB set-aside is authorized, and cannot identify two or more eligible EDWOSB or WOSB concerns that can perform at a fair and reasonable price, but identifies one WOSB or EDWOSB that can perform. In addition, the sole source authority for WOSBs and EDWOSBs is limited to contracts valued at \$6.5 million or less for manufacturing contracts and \$4 million or less for all other contracts.

This rule does not impose any new reporting, recordkeeping or other compliance requirements for small

businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules.

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

VI. 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 Parts 2, 4, 6, 18, 19, and 52

Government procurement.

Dated: September 19, 2016.

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

INTERIM RULE ADOPTED AS FINAL WITH CHANGE

Accordingly, the interim rule amending 48 CFR parts 2, 4, 6, 18, 19, and 52 which was published in the Federal Register at 80 FR 81888, on December 31, 2015, is adopted as a final rule with the following change:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR 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.

19.1505 [Amended]

2. Amend section 19.1505 by removing from paragraph (a) (1) "Program." and adding "Program; and" in its place.

Billing Code: 6820-EP

[FR Doc. 2016-23197 Filed: 9/29/2016 8:45 am; Publication Date: 9/30/2016]