

(c) Consider denying a COC for reasons of nonresponsibility not originally cited by the contracting officer.

(d) When the Area Director determines that a COC is warranted (for contracts valued at \$25,000,000 or less), notify the contracting officer and provide the following options:

(1) Accept the Area Director's decision to issue a COC and award the contract to the concern. The COC issuance letter will then be sent, including as an attachment a detailed rationale for the decision; or

(2) Ask the Area Director to suspend the case for one or more of the following purposes:

(i) To permit the SBA to forward a detailed rationale for the decision to the contracting officer for review within a specified period of time.

(ii) To afford the contracting officer the opportunity to meet with the Area Office to review all documentation contained in the case file and to attempt to resolve any issues.

(iii) To submit any information to the SBA Area Office that the contracting officer believes the SBA did not consider (at which time the SBA Area Office will establish a new suspense date mutually agreeable to the contracting officer and the SBA).

(iv) To permit resolution of an appeal by the contracting agency to SBA Headquarters under 19.602-3. However, there is no contracting officer's appeal when the Area Office proposes to issue a COC valued at \$100,000 or less.

(e) At the completion of the process, notify the concern and the contracting officer that the COC is denied or is being issued.

(f) Refer recommendations for issuing a COC on contracts greater than \$25,000,000 to SBA Headquarters.

12. Section 19.602-3 is revised to read as follows:

19.602-3 Resolving differences between the agency and the Small Business Administration.

(a) *COCs valued between \$100,000 and \$25,000,000.* (1) When disagreements arise about a concern's ability to perform, the contracting officer and the SBA shall make every effort to reach a resolution before the SBA takes final action on a COC. This shall be done through the complete exchange of information and in accordance with agency procedures. If agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall request that the Area Office suspend action and refer the matter to SBA Headquarters for review. The SBA Area

Office shall honor the request for a review if the contracting officer agrees to withhold award until the review process is concluded. Without an agreement to withhold award, the SBA Area Office will issue the COC in accordance with applicable SBA regulations.

(2) SBA Headquarters will furnish written notice to the procuring agency's Director, Office of Small and Disadvantaged Business Utilization (OSDBU) or other designated official (with a copy to the contracting officer) that the case file has been received and that an appeal decision may be requested by an authorized official.

(3) If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a time period agreed upon by both agencies) that it intends to appeal the issuance of the COC.

(4) The appeal and any supporting documentation shall be filed by the procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a period agreed upon by both agencies) after SBA Headquarters receives the agency's notification in accordance with paragraph (a)(3) of this subsection.

(5) The SBA Associate Administrator for Government Contracting will make a final determination, in writing, to issue or to deny the COC.

(b) *SBA Headquarters' decisions on COCs valued over \$25,000,000.* (1) Prior to taking final action, SBA Headquarters will contact the contracting agency and offer it the following options:

(i) To request that the SBA suspend case processing to allow the agency to meet with SBA Headquarters personnel and review all documentation contained in the case file; or

(ii) To submit to SBA Headquarters for evaluation any information that the contracting agency believes has not been considered.

(2) After reviewing all available information, the SBA will make a final decision to either issue or deny the COC.

(c) *Reconsideration of a COC after issuance.* (1) The SBA reserves the right to reconsider its issuance of a COC, prior to contract award, if—

(i) The COC applicant submitted false information or omitted materially adverse information; or

(ii) The COC has been issued for more than 60 days (in which case the SBA may investigate the firm's current circumstances).

(2) When the SBA reconsiders and reaffirms the COC, the procedures in subsection 19.602-2 do not apply.

(3) Denial of a COC by the SBA does not preclude a contracting officer from awarding a contract to the referred concern, nor does it prevent the concern from making an offer on any other procurement.

[FR Doc. 97-21494 Filed 8-21-97; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97-01; FAR Case 97-008; Item X]

RIN 9000-AH65

Federal Acquisition Regulation; Economically Disadvantaged Individuals

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 amending the Federal Acquisition Regulation (FAR) to update the definition of "small disadvantaged business concern" for conformance with Small Business Administration regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Effective October 21, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-01, FAR case 97-008.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the definition of "small disadvantaged business concern" at FAR 19.001 to update the categories of individuals considered to be socially and economically

disadvantaged. In accordance with the Small Business Administration regulations at 13 CFR 124.105, the Maldives Islands has been added to the category of "Subcontinent Asian Americans"; and Macao, Hong Kong, Fiji, Tonga, Kirabati, Tuvalu, and Nauru have been added to the category of "Asian Pacific Americans."

B. Regulatory Flexibility Act

The 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 comment is not required. However, comments from small entities concerning the affected FAR subpart 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.* (FAC 97-01, FAR case 97-008), 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: August 7, 1997.

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).

2. Section 19.001 is amended by revising paragraphs (b)(1) and (b)(2) under the definition "Small disadvantaged business concern" to read as follows:

19.001 Definitions.

* * * * *

Small disadvantaged business concern * * *

(b) * * * (1) *Subcontinent Asian Americans* means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.

(2) *Asian Pacific Americans* means United States citizens whose origins are

in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, the Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru.

* * * * *
[FR Doc. 97-21495 Filed 8-21-97; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 97-01; FAR Case 95-028; Item XI]

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 adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule that was published as Item VII of Federal Acquisition Circular 90-43 on December 20, 1996. The rule 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 October 21, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755 for information pertaining to status or publication schedules. For

clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-01, FAR case 95-028.

SUPPLEMENTARY INFORMATION:

A. Background

On June 7, 1995, SBA published, as a final rule, changes to its regulations at 13 CFR Parts 121 and 124, which cover the Minority Small Business and Capital Ownership Development Program. As a result of these modifications, the FAR had some inconsistencies regarding who was eligible for a particular 8(a) procurement. An interim FAR rule was published in the **Federal Register** at 61 FR 67420, December 20, 1996 to correct these inconsistencies. This rule finalizes the interim rule with minor amendments to reflect changes that SBA is making in its processing of 8(a) requirements. One comment was received in response to the interim rule. This comment was considered in the development of the final rule.

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 does not impose any new requirements on offerors or contractors. The rule amends the FAR to reflect changes to Small Business Administration (SBA) regulations designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on program participants. The SBA has certified that the changes to its regulations will not have a significant economic impact on a substantial number of small entities.

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.