

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's (SBA) Very Small Business Pilot Program. This program became effective on January 4, 1999.

**EFFECTIVE DATE:** November 23, 1999.

**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 97-14, FAR case 98-013.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103-403) authorized the SBA Administrator to establish and carry out a pilot program for very small business (VSB) concerns. The Small Business Administration (SBA) published a final rule in the **Federal Register** on September 2, 1998, (63 FR 46640), amending 13 CFR Parts 121 and 125 to establish a pilot program for VSB business concerns. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among VSB concerns. Implementation of the program is limited to geographic areas served by 10 SBA district offices. A VSB concern is defined as a small business that has 15 or fewer employees together with average annual receipts that do not exceed \$1 million. Any procurement that has an anticipated dollar value exceeding \$2,500 but not greater than \$50,000 may be set aside for VSB concerns. A contracting officer must set aside for VSB concerns any such service or construction requirement that will be performed within the geographical boundaries served by a designated SBA district office if there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. In the case of a procurement for supplies, a contracting officer must set aside any such requirement for VSBs if the contracting office is located within the geographical area served by a

designated SBA district, and there is a reasonable expectation of obtaining fair and reasonable offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district. The program will expire on September 30, 2000.

The Councils published an interim rule in the **Federal Register** on March 4, 1999, (64 FR 10535). Five respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**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 large or small contractors. The Small Business Administration has certified that the revisions to 13 CFR Parts 121 and 125 being implemented by this rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose 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 5, 8, 12, 19, and 52**

Government procurement.

Dated: September 14, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final With Changes**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR Parts 5, 8, 12, 19, and 52, which was published in the **Federal Register** on March 4, 1999, (64 FR 10535), as a final rule with the following changes:

**PART 19—SMALL BUSINESS PROGRAMS**

1. The authority citation for 48 CFR Part 19, and 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).

**19.904 [Amended]**

2. In section 19.904, remove from paragraphs (a) introductory text, (b), (c), and (d) "shall" and insert "must", in their places.

**19.905 [Amended]**

3. In section 19.905, remove from the introductory text, paragraph (a) introductory text, and paragraph (b) "The contracting officer shall use" and insert "Insert", in their places.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53**

[FAC 97-14; FAR Case 97-307; Item II]

RIN 9000-AI20

**Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting 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 (Councils) have agreed to adopt the interim rule published in the **Federal Register** as Item I of Federal Acquisition Circular 97-10 at 63 FR 70265, December 18, 1998, and the correcting amendment published at 64 FR 3196, January 20, 1999, as a final rule with changes. The rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations covering the Historically Underutilized Business Zone (HUBZone) Program.

**EFFECTIVE DATE:** November 23, 1999.

**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 97-14, FAR case 97-307.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 63 FR 70265, December 18, 1998, and a correcting amendment at 64 FR 3196, January 20, 1999. This final rule amends FAR Parts 6, 19, and 52 to comply with revisions made to the SBA's HUBZone Program contained in 13 CFR Parts 121, 125, and 126 (63 FR 31896, June 11, 1998), and to make editorial revisions. The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in distressed communities in an effort to increase employment opportunities, investment, and economic development in these communities. The program provides for set-asides for firms that meet the definition of a HUBZone small business concern (SBC), sole source awards to HUBZone SBCs, and price evaluation preferences for HUBZone SBCs in acquisitions conducted using full and open competition, and establishes a Governmentwide goal for HUBZone awards. Until September 30, 2000, ten Government agencies are required to comply with the prime contract HUBZone Program. After that date, the program will apply to all Federal agencies employing one or more contracting officers.

Seven respondents submitted comments in response to the interim rule. The Councils considered all comments in the development of the final rule.

This rule was subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule. Therefore, the Councils completed a Final Regulatory Flexibility Analysis (FRFA). Interested parties may obtain a copy of the FRFA from the FAR Secretariat. It is summarized as follows:

The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns (SBCs) located in historically underutilized business

zones in an effort to increase employment opportunities, investment, and economic development in such areas. The HUBZone Program will benefit SBCs by increasing the number of Federal Government contracts awarded to them. There is a statutory goal for HUBZone SBCs to receive 3 percent of contract dollars by fiscal year 2003. The HUBZone Act of 1997, Title VI of Public Law 105-135, 111 Stat. 2592 (December 2, 1997), created the HUBZone Program and directed the Administrator of the Small Business Administration to promulgate implementing regulations. On June 11, 1998, the SBA issued a final rule setting forth the program requirements for qualification as a HUBZone SBC, the Federal contracting assistance available to qualified HUBZone SBCs, and other aspects of this program. This Federal Acquisition Regulation (FAR) rule further implements the SBA rule. There were no public comments received in response to the Initial Regulatory Flexibility Analysis. The small entities affected by this rule are those who fit within the definition of a small business concern as defined by SBA in 13 CFR Part 121 and new Part 126 and who participate in Government contracting. Because the program is new, we cannot estimate precisely the number or classes of small entities that this rule will affect. However, SBA estimates that more than 30,000 SBCs will apply for certification as qualified HUBZone SBCs. These 30,000 HUBZone SBCs will be spread over about 7,000 census tracts, about 900 non-metropolitan counties, 310 Indian reservations, and 217 Alaska Native villages. With respect to projected reporting and recordkeeping requirements, this FAR rule requires that Government prime contractors with contracts that require subcontracting plans to seek out HUBZone SBCs as subcontractors, as well as to maintain records and report on those subcontracts awarded to HUBZone SBCs. These requirements do not apply to small businesses. We selected alternatives that would minimize any adverse economic impact on small business. In general, we modeled the rule's procurement mechanisms, to the extent permitted by the SBA rule, on those already in use within the Government. This approach should make the requirements of the rules immediately familiar to many small businesses that already have extensive experience in dealing with Government contracting offices. Moreover, we structured each individual mechanism to strike an appropriate balance between the interests of HUBZone and non-HUBZone small businesses, and to minimize the overall burden of compliance on small business. For example, we did not make the price evaluation adjustment applicable to all competitive procurements, but rather only to acquisitions that are not reserved or set aside for small business concerns, or where a small business would not be displaced.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104-13) applies because the final rule contains information collection requirements currently approved under OMB Control Numbers 9000-0006 and 9000-0007.

**List of Subjects in 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53**

Government procurement.

Dated: September 14, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

**Interim Rule Adopted as Final With Changes**

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 that was published at 63 FR 70265, December 18, 1998, and the correcting amendment published at 64 FR 3196, January 20, 1999, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 6, 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 6—COMPETITION REQUIREMENTS**

2. Revise section 6.201 to read as follows:

**6.201 Policy.**

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102.

**PART 19—SMALL BUSINESS PROGRAMS**

3. Amend section 19.306 to revise paragraphs (c), (e), and (k) to read as follows:

**19.306 Protesting a firm's status as a HUBZone small business concern.**

\* \* \* \* \*

(c) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for the HUBZone Program (AA/HUB).

\* \* \* \* \*

(e) Except for premature protests, the contracting officer must forward any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely, to: AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The AA/HUB will notify the protester and the contracting officer of the date the protest was received and whether the protest

will be processed or dismissed for lack of timeliness or specificity.

\* \* \* \* \*

(k) The ADA/GC&8(a)BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award will not apply to that acquisition. The ADA/GC&8(a)BD's decision is the final decision.

4. Revise section 19.307 to read as follows:

**19.307 Solicitation provisions.**

(a)(1) Insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contractor will perform the contract inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(2)(i) Use the provision with its Alternate I in solicitations issued by the following agencies on or before September 30, 2000:

- (A) Department of Agriculture.
- (B) Department of Defense.
- (C) Department of Energy.
- (D) Department of Health and Human Services.
- (E) Department of Housing and Urban Development.
- (F) Department of Transportation.
- (G) Department of Veterans Affairs.
- (H) Environmental Protection Agency.
- (I) General Services Administration.
- (J) National Aeronautics and Space Administration.

(ii) Use the provision with its Alternate I in solicitations issued by all Federal agencies after September 30, 2000.

(3) Use the provision with its Alternate II in solicitations issued by DoD, NASA, or the Coast Guard that the contracting officer expects will exceed the threshold at 4.601(a).

(b) Insert the provision at 52.219-22, Small Disadvantaged Business Status, in solicitations that include the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting. Use the provision with its Alternate I in solicitations for acquisitions for which a price

evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis.

(c) When contracting by sealed bidding, insert the provision at 52.219-2, Equal Low Bids, in solicitations and contracts when the contractor will perform the contract inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

5. Amend section 19.800 to revise paragraph (e) to read as follows:

**19.800 General.**

\* \* \* \* \*

(e) Before deciding to set aside an acquisition in accordance with Subpart 19.5 or 19.13, the contracting officer should review the acquisition for offering under the 8(a) Program. If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b)) give first priority to HUBZone 8(a) concerns.

\* \* \* \* \*

6. Amend section 19.1303 to revise paragraph (b) to read as follows:

**19.1303 Status as a qualified HUBZone small business concern.**

\* \* \* \* \*

(b) If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at <http://www.sba.gov/hubzone>. A firm on the list is eligible for HUBZone program preferences without regard to the place of performance. The concern must appear on the list to be a HUBZone small business concern.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

7. Amend section 52.219-1 to revise Alternates I and II to read as follows:

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

\* \* \* \* \*

*Alternate I (Nov 1999).* As prescribed in 19.307(a)(2), add the following paragraph (b)(4) to the basic provision:

(4) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It \_\_\_ is, \_\_\_ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred

since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It \_\_\_ is, \_\_\_ is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

*Alternate II (Nov 1999).* As prescribed in 19.307(a)(3), add the following paragraph (b)(5) to the basic provision:

(5) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

- \_\_\_ Black American.
- \_\_\_ Hispanic American.
- \_\_\_ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- \_\_\_ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- \_\_\_ Subcontinent Asian (Asian-Indian American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- \_\_\_ Individual/concern, other than one of the preceding.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 6**

[FAC 97-14; FAR Case 99-001; Item III]

RIN 9000-A144

**Federal Acquisition Regulation; Use of Competitive Proposals**

**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