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LEGAL STATUS

Federal Acquisition Regulation: Rerepresentation of Size and Socioeconomic Status

A Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 01/03/2025

PUBLISHED CONTENT - DOCUMENT DETAILS

Agencies: Department of DefenseGeneral Services Administration National Aeronautics and Space Administration

Agency/Docket Numbers: FAC 2025-03FAR Case 2020-016, Item IIDocket No. FAR-2020-0016 Sequence No. 1

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Department of Defense
General Services Administration
National Aeronautics and Space Administration
48 CFR Parts 4, 8, 16, 19, and 52
[FAC 2025-03; FAR Case 2020-016, Item II; Docket No. FAR-2020-0016; Sequence No. 1]
RIN 9000-AO18

AGENCY:

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

ACTION:

Final rule.

SUMMARY:

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to order-level size and socioeconomic status rerepresentation requirements.

DATES:

Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT:

For clarification of content, contact Ms. Dana Bowman, Procurement Analyst, at 202-803-3188 or by email at *Dana.Bowman@gsa.gov (mailto:Dana.Bowman@gsa.gov).* For information pertaining to status, publication schedules contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov (mailto:GSARegSec@gsa.gov).* Please cite FAC 2025-03, FAR Case 2020-016.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 88 FR 67189 (/citation/88-FR-67189) on September 29, 2023, to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on October 16, 2020, at 85 FR 66146 (/citation/85-FR-66146). For further details please see the proposed rule. Eight respondents submitted comments on the proposed rule. (🗋 print page 518)

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. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. EXCEPTIONS TO THE RULE

Comment: A respondent expressed concerns that the rule requires too much work.

Response: FAR subpart 4.11, System for Award Management (SAM), establishes policies and procedures for requiring registration in SAM. FAR subpart 4.12, Representations and Certifications, establishes policies and procedures for requiring submission and maintenance of representations and certifications in SAM. Offerors and contractors are required to be registered in SAM in accordance with FAR 52.204-7, System for Award Management, and to complete electronic annual representations and certifications in SAM, as part of required registration in accordance with FAR 52.204-13, System for Award Management Maintenance. All registrants are required to review and update the representations and certifications in SAM as necessary, but at least annually, to ensure they are current, accurate, and complete. This rule modifies the clause at FAR 52.219-28, Post-award Small Business Program Rerepresentation, to require offerors to rerepresent their status for orders issued under multiple-award contracts under certain circumstances. Although this rule requires offerors to rerepresent, contractors are already required to ensure that their representations and certifications in SAM are current, accurate, and

complete. Therefore, this rule only imposes an additional burden for orders requiring rerepresentation in accordance with paragraphs (c)(1) through (3) of the FAR clause at 52.219-28.

Comment: A respondent recommended that SBA create a database for small business certifications, which would allow for a check and balance of a contractor's self-certification and protect contracting officers in the event they are unable to verify a concern's status.

Response: SBA already maintains a database of certified small business concerns. Specifically, the Dynamic Small Business Search (DSBS) database is SBA's small business certification repository. Certifications in DSBS also appear in SAM, which is the Government's repository for prospective and current Federal awardee information, including representations and certifications. The FAR requires contracting officers to review SAM to verify the contractor's current size and socioeconomic status. If a concern's certification status is not reflected in SAM, contracting officers can verify a concern's status by checking DSBS at *https://dsbs.sba.gov (https://dsbs.sba.gov)*.

Comment: A respondent recommended that recertification for size or socioeconomic status for orders should not be required.

Response: This rule implements regulatory changes made by SBA in its final rule published on October 16, 2020, which requires rerepresentation for orders placed against multiple-award contracts under certain circumstances. The FAR currently requires contractors to rerepresent their status under certain circumstances. This rule expands the requirement for rerepresentation to verify orders that are set aside for small businesses under certain multiple-award contracts are awarded to qualified small businesses.

Comment: Some respondents indicated that the proposed rule does not consider the time it takes to award a task order. The respondents stated that the period of time from proposal submission to order award often takes 12 to 36 months. Due to the time it takes to award an order, some respondents expressed concerns that this may impact the Government's ability to award the order as the awardee's small business status could change during this period of time. A respondent stated that small businesses compete for and are awarded contracts for which they qualify at that time, and they should be afforded the opportunity to be awarded task orders under those contracts. The respondent

indicated that a company's size can change periodically and that a business that was small at the time of proposal submission may be large at order award. The respondents also questioned if the selected awardee would be eligible for award if its size or socioeconomic status changed between proposal submission and order award.

Response: In accordance with SBA's final rule, size and socioeconomic status are determined at the time of initial offer (or other formal response to a solicitation), which includes price, for an order issued against a multiple-award contract if the contracting officer requests rerepresentation for the order. Therefore, the offeror will remain qualified for the order if its status changes between offer submittal and award of the order.

Comment: A respondent asked how an offeror's eligibility would be affected if rerepresentation is required for an order that is set aside under a multiple-award contract and the offeror is no longer small for the North American Industry Classification System (NAICS) code associated with the contract or no longer qualifies under the socioeconomic category for which it initially qualified. The respondent also asked if a woman-owned small business would lose its small business status that it had at initial award if it rerepresented as large at a later date. Lastly, the respondent asked if the goal of this proposed rule is to require small businesses to certify their size and socioeconomic status for the life of the contract.

Response: A small business concern awarded a multiple-award contract that was set aside for small businesses may continue to perform under such a contract as a small business concern throughout for the life of those contracts (*e.g.,* for the base period and up to four additional option years). However, if a contracting officer requires rerepresentation of size and/or socioeconomic status for a particular order, size and socioeconomic status is determined at the time of offer submission for the order. To clarify for the respondent, a woman-owned small business that represents as large for a particular order, under a multiple-award contract affected by this rule, would be considered large for that order.

Comment: One respondent recommended that implementation of this policy be applicable to new multiple-award contracts or, alternatively, apply the policy to orders issued under multiple-award contracts after January 1, 2025.

Response: In accordance with FAR 1.108(d), this policy applies to solicitations for contracts issued on or after the effective date of the final rule. The contracting officer also has the discretion to include the changes made in this final rule in solicitations for contracts issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date of the final rule. In addition, contracting officers may, at their discretion, include the changes made in this final rule in any existing contract with appropriate consideration. The final rule does not require that existing contracts be modified to add (🗋 print page 519) the updated version of FAR clause 52.219-28.

Comment: A respondent recommended the rule be amended to clearly define the criteria and timelines for contracting officers requesting rerepresentation of size under existing multiple-award contracts.

Response: The final rule text at FAR 19.301-2(b)(2) specifies the new requirements for a contractor to rerepresent its status for orders placed against multiple-award contracts under certain circumstances in accordance with FAR clause 52.219-28. Contracting officers include FAR clause 52.219-28 in solicitations and contracts in accordance with the prescription at FAR 19.309(c)(1). The clause at FAR 52.219-28 provides instructions to offerors and contractors regarding when rerepresentation is required; therefore, it is not necessary to provide additional instructions to contracting officers.

2. CLARIFICATIONS

Comment: A few respondents recommended removing “and whose socioeconomic status is not certified by the SBA”, from the proposed rule at FAR 19.301-2(b), and in FAR clause 52.219-28. A respondent stated that the proposed FAR text does not exist in the SBA rule and that including the text would make the FAR inconsistent with SBA regulations. The respondent stated that SBA regulations require representation even if the SBA certifies the concern's socioeconomic status. The respondent stated the rule, as written, exempts small businesses whose socioeconomic status is certified by the SBA. A respondent stated that the proposed FAR text makes the requirement appear to only apply to small businesses that are not small disadvantaged businesses while exempting small disadvantaged businesses.

Response: The final rule FAR text at 19.301-2(b) and paragraph (c) of the clause at FAR 52.219-28 has been revised to adopt the recommendation.

Comment: A respondent recommended clarifying when recertification is required for orders issued under a Federal Supply Schedule (FSS) contract. The respondent recommended adding the following new paragraph (b)(2)(iv) at FAR 19.301-2: A contractor generally does not need to recertify its size eligibility for orders issued under a FSS contract unless the ordering contracting officer specifically requests such recertification for that order, under paragraph (b)(3) of this section.

Response: The final rule FAR text at 19.301-2(b)(3) and paragraph (c)(4) of the clause at FAR 52.219-28 specifies that for the NAICS code assigned to an order under a multiple-award contract, rerepresentation is required if the contracting officer requires it for that order. This also applies to orders issued under an FSS contract. The final rule FAR text at 19.301-2(b)(2) and paragraph (c) of the clause at FAR 52.219-28 describes when a contractor must rerepresent for an order and also specifies “except for an order issued under a Federal Supply Schedule contract”; therefore, it is not necessary to add the recommended paragraph.

Comment: A respondent recommended revising the proposed rule FAR text at 19.301-2(b)(2)(i) to replace: “unless the order is issued under an unrestricted multiple-award contract with reserves” with “except for orders issued under a reserved portion of a multiple-award contract with reserves, in which case recertification is not required . . .” to clarify that recertification is not required for orders issued under the reserved portion of a multiple-award contract. The respondent recommended text they believed offered additional clarity that would assist industry in understanding recertification requirements.

Response: The final rule text at FAR 19.301-2(b)(2)(i) is revised to partially adopt the respondent's recommendation.

Comment: A respondent stated that the scenario illustrated at FAR 19.301-2(b)(2)(ii) and (iii) incorrectly suggests that it is permitted by SBA regulations. The respondent recommends revising the proposed FAR text at 19.301-2(b)(2)(ii) and (iii) to make clear that they apply to socioeconomic category orders issued under multiple-award contracts that are set aside for small businesses. The respondent recommended editing the proposed rule FAR text at 19.301-2(b)(2)(ii) and (iii) to clarify that each paragraph is referring to a multiple-award contract that is set aside for small businesses.

Response: The examples included in the final rule FAR text at 19.301-2(b)(2)(ii) and (iii) and in paragraphs (c)(2) and (3) of the clause at FAR 52.219-28 are revised to adopt the recommendation to edit the examples for accuracy.

Comment: A respondent stated that, while the proposed rule helps to explain the different circumstances under which size and socioeconomic recertification is required, it does not address unique recertification issues that arise under sole-source orders placed under the 8(a) Business Development Program. The respondent recommended that the final rule be amended to add a new paragraph at FAR 19.301-2(b) to explain SBA's responsibility to determine eligibility for 8(a) sole-source orders. The respondent indicated that, absent additional clarity, some contracting officers might incorrectly believe that recertification is not required for 8(a) sole-source orders.

Response: This rule does not exempt contracting officers from complying with FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program). Contracting officers are required to follow 8(a) offer and acceptance procedures at FAR 19.804-2 and 19.804-3 for competitive and sole-source 8(a) contracts and orders, respectively. SBA will determine an 8(a) participant's eligibility during this process; therefore, it is not necessary to restate 8(a) Program requirements at FAR 19.301-2(b).

Comment: A respondent recommended correcting a typographical error that references paragraph “a” in the proposed revision to paragraph (c) of the clause at FAR 52.219-28.

Response: The final rule FAR text in paragraph (c) of the clause at FAR 52.219-28 has been revised to replace “a” with “c”.

3. NEGATIVE IMPACTS OF THE RULE

Comment: A few respondents indicated that the proposed rule will creates an environment of reduced competition, lower quality bidders, and will force small businesses to compete on an uneven playing field.

Response: SBA's final rule requires contractors to rerepresent their status for orders set aside for small businesses under an unrestricted multiple-award contract for which size and socioeconomic status were not relevant to the award of the underlying multiple-award contract. This distinction is important because the award of an order under such a

multiple-award contract is the first time that size and socioeconomic status is relevant. Therefore, requiring a concern to represent its size and socioeconomic status encourages fair competition among small businesses.

Comment: A respondent stated that the proposed rule will impose an onerous burden of new recordkeeping, reporting, and other compliance requirements on small businesses. The respondent stated that this would require a significant increase in staff time and result in additional cost to those businesses and the Government.

Response: This rule revises an information collection currently approved under OMB Control Number 9000-0163. Accordingly, the Regulatory (🗋 print page 520) Secretariat Division submitted to the Office of Management and Budget (OMB) a request for approval of a revised information collection requirement concerning 9000-0163, Rerepresentation of Size and Socioeconomic Status, that includes burden estimates for order-level rerepresentation requirements. In addition, FAR subpart 4.12, Representations and Certifications, establishes policies and procedures for requiring submission and maintenance of representations and certification via SAM. Offerors and quoters are required to complete electronic annual representations and certification in SAM, as part of required registration in accordance with FAR 4.1201. All registrants are required to review and update the representations and certifications submitted in SAM as necessary, but at least annually, to ensure they are current, accurate, and complete. Therefore, since contractors and offerors are already required to maintain and update their representations and certifications in SAM, this rule only imposes an additional burden for the orders requiring rerepresentation in accordance with paragraphs (c)(1) through (3) of the clause at FAR 52.219-28. The additional estimated total burden hours for all small businesses to rerepresent at the order level is approximately 534 hours annually.

Comment: A respondent asked if the Government has a process in place for managing inaccurate data and data reporting and, if not, recommended the issue be addressed prior to the implementation of this rule to ensure accurate data is available to all taxpayers.

Response: Section IV, Expected Impact of the Rule, in the preamble of the proposed rule indicated that the Federal Procurement Data System (FPDS) does not currently capture size and socioeconomic status at the order level; therefore, contracting officers will not be

able to indicate the size or socioeconomic status of a small business concern at the order level. This may result in inaccurate data and data reporting. However, FPDS is anticipated to be updated to capture this data.

4. OUTSIDE THE SCOPE OF THE RULE

Comment: A few respondents submitted comments that were unrelated to the scope of the rule.

A respondent asked for guidance on the certification for contractors under teaming arrangements and joint ventures. Another respondent recommended that the small business size standard be set at 500 employees for both product and service contracts to prevent current small businesses with 250 to 300 personnel from graduating from small business status and ensuring their continued growth and development into large businesses. A respondent recommended creating a middle-market set-aside category for businesses exceeding 500 employees with an annual revenue less than $250 million per year or five times the current size standard. Another respondent objected to bailouts.

Response: These comments are outside the scope of this rule. The FAR defers to SBA to establish small business size standards.

C. Other Changes

Conforming changes are made at FAR 4.604, 8.405-5(b), 16.505(b), 19.202-5(c), and 19.301-2. Paragraph headings are added at 19.301-2(b), (c), (d), and (e) to describe the contents of such paragraphs and to conform with FAR drafting convention. The text at FAR 19.301-2(d)(2)(i) and (ii) is amended for clarity.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, (Including Commercially Available Off-the-Shelf (COTS) Items) and for Commercial Services

This final rule amends the clauses at FAR 52.219-28, Postaward Small Business Program Rerepresentation, and 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services. The clauses continue to apply to acquisitions at or below the SAT, acquisitions for commercial products (including COTS items), and acquisitions for commercial services.

IV. Expected Impact of the Rule

As a result of this final rule, a contractor that represented its status before contract award will be required to rerepresent its size and/or socioeconomic status for an order placed under a multiple-award contract, under certain circumstances and where rerepresentation was not previously required. The final rule validates that orders set aside for small businesses under certain multiple-award contracts are awarded to small businesses that qualify for the size and/or socioeconomic status associated with the orders. Therefore, an entity that no longer qualifies as small under the applicable NAICS code associated with an order, or that no longer qualifies for a particular socioeconomic category, will not be eligible for orders placed under certain multiple-award contracts.

As a result of this final rule, contracting officers will be required to verify the size and/or socioeconomic status of a small business concern prior to issuing an order under multiple-award contracts subject to this rule.

Orders placed under an FSS contract are exempt from the mandatory rerepresentation requirement; however, contracting officers continue to have the discretion to require a rerepresentation for an order under an FSS contract.

This final rule is also expected to prevent agencies from receiving credit toward their small business goals for awards made to firms that no longer qualify as small under the applicable NAICS code or that no longer qualify as a small business concern identified at FAR 19.000(a)(3).

Existing e-business systems are impacted by this final rule as FPDS does not currently capture size and socioeconomic status at the order level; therefore, contracting officers will not be able to indicate the size or socioeconomic status of a small business concern at the order level. This may result in inaccurate data and data reporting. However, the Government anticipates that FPDS will be updated to capture this data.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094 (/executive-order/14094)) and 13563 direct agencies to assess the 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 (/executive-order/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 (/executive-order/12866), Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2) (https://www.govinfo.gov/link/uscode/5/804). (🗋 print page 521)

VII. 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. 601-612 (https://www.govinfo.gov/link/uscode/5/601).

1. Statement of the need for, and the objectives of, the rule.

DoD, GSA, and NASA are issuing a final rule to amend the FAR to update the rerepresentation of size and socioeconomic status requirements for set-aside orders issued under unrestricted multiple-award contracts to align with the regulatory changes made by the Small Business Administration (SBA) in its final rule dated October 16, 2020, at 85 FR 66146 (/citation/85-FR-66146). This final rule requires a business concern to rerepresent its size and/or socioeconomic status for all set-aside orders under unrestricted multiple-award contracts, unless the contract authorized reserves of specific types of small business concerns for which size and/or socioeconomic status was required, and the order is issued against the reserved portion. Additionally, this rule requires a business concern to rerepresent its socioeconomic status for all set-aside orders for which the required socioeconomic status for the order differs from that of the underlying set-aside multiple-award contract. The updated requirements are made to clarify SBA's regulatory provisions and eliminate confusion among small businesses and contracting activities.

2. Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rules as a result of such comments.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Currently, contractors are required to rerepresent their size and socioeconomic status for orders under multiple-award contracts if the contracting officer requires rerepresentation for that order or as required by the clause at FAR 52.219-28. This rule requires contractors to rerepresent their size and/or socioeconomic status for all orders issued under unrestricted multiple-award contracts (except for orders issued under Federal Supply Schedule (FSS) contracts), and for set-aside orders for which the required socioeconomic status for the order differs from that of the underlying set-aside multiple-award contract.

3. Description of and an estimate of the number of small entities to which the rule will apply.

According to data from the Federal Procurement Data System (FPDS) for fiscal year (FY) 2021, FY 2022, and FY 2023, small businesses were required to rerepresent their socioeconomic status for modifications as follows: 2,006, 3,379, in and 2,842, respectively. This averages out to approximately 2,742 rerepresentation modifications per year. Additional data from FPDS indicates that agencies set aside orders under unrestricted multiple-award contracts, excluding reserve orders and orders under FSS contracts, as follows: 7,341 in FY 2021, 7,463 in FY 2022, and 8,336 in FY 2023, which averages out to 7,713 per year. Data from FPDS also indicates that agencies set aside orders under set-aside multiple-award contracts (other than FSS contracts) in the categories covered by this rule as follows: 2,060 in FY 2021, 1,977 in FY 2022, and 2,213 in FY 2023, which averages out to 2,083 per year. Therefore, the estimated number of small entities to which the rule will apply is 4,179.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.

This rule includes new reporting, recordkeeping, or other compliance requirements for small entities. The Regulatory Secretariat Division has submitted to OMB a request to review and approve revisions to previously approved information collection requirements

in the clause at FAR 52.219-28, Post-Award Small Business Program Rerepresentation.

5. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

There are no known significant alternative approaches that would accomplish the stated objectives.

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.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501-3521 (https://www.govinfo.gov/link/uscode/44/3501)) applies. The rule contains information collection requirements. The Regulatory Secretariat Division has submitted to OMB a request to review and approve revisions to previously approved information collection requirements in the FAR clause at 52.219-28.

A. OMB Control Number, Title, and Any Associated Form(s)

OMB control number and title: 9000-0163, Rerepresentation of Size and Socioeconomic Status.

B. Need and Uses

This rule amends FAR clause 52.219-28 to require concerns to also rerepresent their size and/or socioeconomic status for orders placed under multiple-award contracts under certain circumstances as described in paragraph (c) of the clause and this preamble.

The collected information is used by SBA, Congress, Federal agencies, and the public for various reasons such as market research, set-aside determinations, and determining if agencies are meeting statutory goals.

C. Annual Burden

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

The increase in the annual reporting burden, because of the final rule, is estimated as follows:

Respondents: 835.

Total annual responses: 1,069.

Total response burden hours: 534.

D. Public Comment to OMB on Information Collection

A 60-day notice was published in the **Federal Register** at 88 FR 67189 (/citation/88-FR-67189), on September 29, 2023. A comment was received and addressed in section II. of this preamble; however, it did not change the estimate of the burden. Written comments and recommendations for this information collection revision should be sent within 30 days of publication of this rule to *www.reginfo.gov/public/do/PRAMain (http://www.reginfo.gov/public/do/PRAMain).* Find this information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

E. Obtaining Copies

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing *GSARegSec@gsa.gov (mailto:GSARegSec@gsa.gov).* Please cite OMB Control Number 9000-0163, Small Business Rerepresentation.

List of Subjects in 48 CFR Parts 4 (https://www.ecfr.gov/current/title-48/part-4), 8 (https://www.ecfr.gov/current/title-48/part-8), 16 (https://www.ecfr.gov/current/title-48/part-16), 19 (https://www.ecfr.gov/current/title-48/part-19), and 52 (https://www.ecfr.gov/current/title-48/part-52)

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 4 (https://www.ecfr.gov/current/title-48/part-4), 8 (https://www.ecfr.gov/current/title-48/part-8), 16 (https://www.ecfr.gov/current/title-48/part-16), 19 (https://www.ecfr.gov/current/title-48/part-19), and 52 (https://www.ecfr.gov/current/title-48/part-52) as set forth below:

1. The authority citation for 48 CFR parts 4 (https://www.ecfr.gov/current/title-48/part-4), 8 (https://www.ecfr.gov/current/title-48/part-8), 16 (https://www.ecfr.gov/current/title-48/part-16), 19 (https://www.ecfr.gov/current/title-48/part-19), and 52 (https://www.ecfr.gov/current/title-48/part-52) continues to read as follows:

   Authority: 40 U.S.C. 121(c) (https://www.govinfo.gov/link/uscode/40/121); 10 U.S.C. chapter 4 (https://www.govinfo.gov/link/uscode/10/401) and 10 U.S.C. chapter 137 (https://www.govinfo.gov/link/uscode/10/13701) legacy provisions (see 10 U.S.C. 3016 (https://www.govinfo.gov/link/uscode/10/3016)); and 51 U.S.C. 20113 (https://www.govinfo.gov/link/uscode/51/20113).

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.604 [Amended]

2. Amend section 4.604 in paragraph (b)(4) by removing the text “contracting office” and “Post-Award” and adding (🗋 print page 522) “contracting officer” and “Postaward” in their places, respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405-5 [Amended]

3. Amend section 8.405-5 in paragraph (b) by removing the text “section 19.301-2(b)(2)” and adding “19.301-2(b)(3)” in its place.

PART 16—TYPES OF CONTRACTS

16.505 [Amended]

4. Amend section 16.505 in paragraph (b)(9) by removing the text “section 19.301-2(b)(2)” and adding “19.301-2(b)(3)” in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.202-5 [Amended]

5. Amend section 19.202-5 in paragraph (c) introductory text by removing “Post Award” and adding “Postaward” in its place.

6. Amend section 19.301-2 by—

   a. Revising the section heading and paragraph (b) introductory text;

   b. Removing from paragraphs (b)(1)(i) and (ii) “Post-Award” and adding “Postaward” in its place;

   c. Redesignating paragraph (b)(2) as paragraph (b)(3);

   d. Adding a new paragraph (b)(2);

   e. Adding headings to paragraphs (c) and (d);

   f. Revising paragraphs (d)(2)(i) and (ii); and

   g. Adding a heading to paragraph (e).

The revisions and additions read as follows:

19.301-2 Rerepresentation by a contractor that represented its status as a small business concern.

★* ★* ★* ★* ★*

(b) *Requirements.* A contractor that represented its status as any of the small business concerns identified at 19.000(a)(3) before contract award is required to rerepresent its size and socioeconomic status in accordance with the clause at 52.219-28, Postaward Small Business Program Rerepresentation—

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(2) For the NAICS code assigned to an order (except for an order issued under a Federal Supply Schedule contract)—

(i) Set aside exclusively for a small business concern identified at 19.000(a)(3) that is issued under an unrestricted multiple-award contract, unless the order is issued under the reserved portion of an unrestricted multiple-award contract (*e.g.,* an order set aside for a woman-owned small business concern under a multiple-award contract that was not set-aside, unless the order is issued under the reserved portion of the multiple-award contract);

(ii) Issued under a multiple-award contract set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying multiple-award contract (*e.g.,* an order set aside for a HUBZone small business concern under a multiple-award contract that is set-aside for small businesses); or

(iii) Issued under the part of the multiple-award contract that is set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying set-aside part of the multiple-award contract (*e.g.,* an order set aside for a part of the multiple-award contract that is partially set-aside for small businesses); or

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(c) *NAICS code size standard.* * * *

(d) *Procedures* — * * *

(2) * * *

(i) When an order is issued under an unrestricted multiple-award contract and the contractor's rerepresentations no longer qualifies it as a small business concern identified at 19.000(a)(3), the agency can no longer include the value of the order in its small business prime contracting goal achievements. When a contractor's rerepresentation for an order qualifies it as a different small

business concern identified at 19.000(a)(3) than what it represented for contract award, the agency can include the value of the order in its small business prime contracting goal achievement, consistent with the rerepresentation.

(ii) A rerepresentation for an order issued under an unrestricted multiple-award contract does not change the size or socioeconomic status representation for the contract.

(e) *Size status change.* * * *

19.302 [Amended]

7. Amend section 19.302 in paragraph (j) by removing “Post-Award” and adding “Postaward” in its place.

19.309 [Amended]

8. Amend section 19.309 in paragraph (c)(1) by removing “Post-Award” and adding “Postaward” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 [Amended]

9. Amend section 52.212-5 in paragraph (b)(26)(i) by removing “Post-Award” and “(FEB 2024)” and adding “Postaward” and “(JAN 2025)” in their places, respectively.

10. Amend section 52.219-28 by—

a. Revising the section heading, clause heading and date, and paragraph (c); and

b. Removing from paragraph (f) “paragraph (b) and (c)” and “office in” and adding “paragraphs (b) and (c)” and “officer in” in their places, respectively.

The revisions read as follows:

52.219-28 Postaward Small Business Program Rerepresentation.

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POSTAWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JAN 2025)

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(c) If the Contractor represented its status as any of the small business concerns identified at 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, for the NAICS code assigned to an order (except that paragraphs (c)(1) through (3) of this clause do not apply to an order issued under a Federal Supply Schedule contract at subpart 8.4)—

(1) Set aside exclusively for a small business concern identified at 19.000(a)(3) that is issued under an unrestricted multiple-award contract, unless the order is issued under the reserved portion of an unrestricted multiple-award contract (*e.g.,* an order set aside for a woman-owned small business under a multiple-award contract that is not set-aside, unless the order is issued under the reserved portion of the multiple-award contract);

(2) Issued under a multiple-award contract set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying multiple-award contract (*e.g.,* an order set aside for a HUBZone small business concern under a multiple-award contract that is set aside for small businesses);

(3) Issued under the part of the multiple-award contract that is set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying set-aside part of the multiple-award contract (*e.g.,* an order set aside for a WOSB concern under the part of the multiple-award contract that is partially set aside for small businesses); and

(4) When the Contracting Officer explicitly requires it for an order issued under a multiple-award contract, including for an order issued under a Federal Supply Schedule contract (see 8.405-5(b) and 19.301-2(b)(2)).

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