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LEGAL STATUS

Federal Acquisition Regulation: Small Business Program Amendments

A Rule by the [Defense Department](#), the [General Services Administration](#), and the [National Aeronautics and Space Administration](#) on [02/14/2023](#)

DOCUMENT DETAILS

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Effective March 16, 2023.

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FAC 2023-02

FAR Case 2019-008

Item II

Docket No. 2019-0008

Sequence No. 1

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ENHANCED CONTENT



Docket Number:

FAR-2019-0008 (<https://www.regulations.gov/docket/FAR-2019-0008>)

Docket Name:

Small Business Program Amendments; (FAR Case 2019-008) Proposed

Docket RIN

9000-AN91 (<https://www.federalregister.gov/regulations/9000-AN91/federal-acquisition-regulation-far-far-case-2019-008-small-business-program-amendments>)

Supporting/Related Materials:

Acquisition Regulation: Small Business Program Amendments (<https://www.regulations.gov/document?D=FAR-2019-0008-0007>)

Acquisition Regulation: Small Business Program Amendments (<https://www.regulations.gov/document?D=FAR-2019-0008-0001>)

ENHANCED CONTENT

PUBLISHED DOCUMENT

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 several changes made to the Small Business Administration (SBA) regulations.

DATES:

Effective March 16, 2023.

FOR FURTHER INFORMATION CONTACT:

Ms. Malissa Jones, Procurement Analyst, at 571-886-4687, or by email at malissa.jones@gsa.gov (<mailto:malissa.jones@gsa.gov>), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov (<mailto:GSARegSec@gsa.gov>). Please cite FAC 2023-02, FAR Case 2019-008.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 87 FR 10327 (/citation/87-FR-10327) on February 24, 2022, to amend the FAR to implement several revisions that the Small Business Administration (SBA) made to its regulations in its final rule published on November 29, 2019, at 84 FR 65647 (/citation/84-FR-65647).

Five respondents submitted comments in response to the proposed rule.

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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 minor change was made to 19.307(d)(1)(iii) as a result of the public comments received. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. SUPPORT FOR THE RULE

Comment: One respondent expressed support for the rule.

Response: The Councils acknowledge the respondent's support for the rule.

2. NEGATIVE IMPACTS OF THE RULE

Comment: One respondent expressed concern regarding potential negative impacts of the rule. The respondent believes that the new rule is unfair to 8(a) program participants who spend time and money in pursuit of long-term contracts with the Federal Government, specifically category management-type contracts. The respondent indicated that the proposed rule will shorten the lifespan of 8(a) contracts if an 8(a) participant graduates from the program before the contract ends. The respondent also indicated the proposed rule may result in a reduction in the number and value of long-term 8(a) contracts for the Government and small businesses.

Response: The Councils acknowledge the respondent's concerns regarding the impact this rule will have on 8(a) participants and the Government with regard to long-term 8(a) contracts. As a result of this rule, the Government will not be able to exercise a fifth-year option on a long-term contract if the contractor is no longer eligible under the 8(a) program. However, this rule implements several revisions SBA made to its regulations in its final rule published on November 29, 2019, at 84 FR 65647 (/citation/84-FR-65647). SBA modified 13 CFR 124.521(e)(2) ([https://www.ecfr.gov/current/title-13/section-124.521#p-124.521\(e\)\(2\)](https://www.ecfr.gov/current/title-13/section-124.521#p-124.521(e)(2))) to require contracting officers to verify that a business concern continues to be an eligible 8(a) participant no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising an option, and where a concern no longer qualifies the rule precludes contracting officers from exercising the option. In its final rule, SBA pointed out that Congress intended that 8(a) program participation be limited to nine years, and for 8(a) participants to leave the program and go on to participate successfully and independently in the Government contracting arena. Therefore, allowing contracting officers to continue to exercise options for 8(a) program participants under these circumstances would not meet Congress' intent.

3. CLARIFICATIONS

A. CLARIFY SBA REQUIREMENTS FOR 8(A) ELIGIBILITY PRIOR TO EXERCISING THE FIFTH (5TH) OPTION YEAR

Comment: One respondent asked if an 8(a) participant is not eligible for the award of a fifth year option, can SBA authorize an extension to an 8(a) participant's program term to allow agencies time for re-procurement.

Response: An 8(a) participant's eligibility is determined in accordance with SBA's regulations and a participant's status is reflected in DSBS.

Comment: One respondent asked if current procurements are grandfathered from this rule.

Response: In accordance with FAR 1.108(d), FAR changes made by this rule apply to solicitations issued on or after the effective date of the change unless otherwise specified.

Comment: One respondent requested that eligibility verification be changed from “no more than 120 days prior” to “no less than 120 days prior”.

Response: This rule is consistent with 13 CFR 124.521(e)(2) ([https://www.ecfr.gov/current/title-13/section-124.521#p-124.521\(e\)\(2\)](https://www.ecfr.gov/current/title-13/section-124.521#p-124.521(e)(2))) and implements SBA's final rule at 84 FR 65647 (/citation/84-FR-65647) (see comment category 2).

B. CLARIFY SBA PROTEST PROCEDURES AND APPLICABILITY

Comment: One respondent asked if an 8(a) contractor that did not receive the award could protest the exercise of an option during the 6th, 7th, or 8th year of a contract if they suspect the contractor has graduated from the 8(a) program.

Response: Protests of small business representations and rerepresentations by an 8(a) contractor are made in accordance with FAR 19.813, *Protesting a small business representation or rerepresentation*. This rule does not make changes to FAR 19.302.

Comment: One respondent indicated that the addition of “sole source” at FAR 19.306(d)(1)(iv) and 19.308(d)(1)(iii) is inconsistent with SBA regulations regarding the new ostensible subcontractor protest grounds (*e.g.*, HUBZone and WOSB/EDWOSB protests (13 CFR 126.601(d) ([https://www.ecfr.gov/current/title-13/section-126.601#p-126.601\(d\)](https://www.ecfr.gov/current/title-13/section-126.601#p-126.601(d))) and 13 CFR 127.504(g) ([https://www.ecfr.gov/current/title-13/section-127.504#p-127.504\(g\)](https://www.ecfr.gov/current/title-13/section-127.504#p-127.504(g))))).

Response: Although the ostensible subcontractor protest grounds in SBA's regulations at 13 CFR 126.601(d) ([https://www.ecfr.gov/current/title-13/section-126.601#p-126.601\(d\)](https://www.ecfr.gov/current/title-13/section-126.601#p-126.601(d))) and 13 CFR 127.504(g) ([https://www.ecfr.gov/current/title-13/section-127.504#p-127.504\(g\)](https://www.ecfr.gov/current/title-13/section-127.504#p-127.504(g))) do not include “or sole source”, SBA did include “sole source” when describing the ostensible subcontractor rule in its final rule published on November 29, 2019 at 84 FR 65647 (/citation/84-FR-65647), to make clear that the ostensible subcontractor rule applies to set-aside and sole source contracts.

Comment: One respondent recommended that “or order” be added to FAR 19.307(d)(1)(iii) following “sole-source service contract” to be consistent with SBA's regulations at 13 CFR 125.18(f) ([https://www.ecfr.gov/current/title-13/section-125.18#p-125.18\(f\)](https://www.ecfr.gov/current/title-13/section-125.18#p-125.18(f))).

Response: The Councils adopted the recommendation and conforming edits were made at FAR 19.306(d) and 19.308(d).

C. CLARIFY DATE OF SIZE REPRESENTATION

Comment: One respondent indicated that the size determination for contractors under Federal Supply Schedule Multiple-Award Schedule contracts should be determined as of the date of each response to a request for quotation instead of the date of the initial offer for the multiple-award schedule contract.

Response: This rule implements SBA's final rule at 84 FR 65647 (/citation/84-FR-65647) dated November 29, 2019, which clarified that SBA determines size as of the date of initial offer for the multiple-award contract, whether or not the offer includes price. Therefore, this rule is consistent with SBA's regulations at 13 CFR 121.404(a)(1)(iv) ([https://www.ecfr.gov/current/title-13/section-121.404#p-121.404\(a\)\(1\)\(iv\)](https://www.ecfr.gov/current/title-13/section-121.404#p-121.404(a)(1)(iv))), which specify the timing of SBA's size determination.

Comment: One respondent recommended that the words “or the price is evaluated” at FAR 19.102(a)(4), 19.301-1(b), and 19.301-1(e)(1) be deleted to be consistent with 13 CFR 121.404(a)(1)(iv) ([https://www.ecfr.gov/current/title-13/section-121.404#p-121.404\(a\)\(1\)\(iv\)](https://www.ecfr.gov/current/title-13/section-121.404#p-121.404(a)(1)(iv))).

Response: SBA's final rule published at 84 FR 65647 (/citation/84-FR-65647) dated November 29, 2019, clarified that when an agency uses indefinite delivery, indefinite quantity (IDIQ), multiple-award contracts that do not require offerors to include price, size will be determined as of the date of the initial offer which may not include price. The phrase “may not” here means “might not.” This rule adds the words “or the price is evaluated” at 19.102(a)(4), 19.301-1(b), and 19.301-1(e)(1) to clarify SBA's intent.

D. CLARIFY THE LANGUAGE IN THE PROPOSED FAR RULE TO MORE CLOSELY ALIGN WITH SBA'S REGULATIONS

Comment: While recognizing that the proposed rule is likely sufficient, one respondent recommended that the rule be amended to include “which is found at section 121.201, footnote 18” from SBA's regulation regarding the size standard for Information Technology □ Value-added Reseller under NAICS Code 541519.

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Response: The proposed rule included the size standard for nonmanufacturers and the size standard for information technology value added resellers under NAICS code 541519. In addition, FAR 19.102(a) includes a reference to SBA's Small business size standards and corresponding (NAICS) codes at 13 CFR 121.201 (<https://www.ecfr.gov/current/title-13/section-121.201>) and provides the website for NAICS codes at <https://www.sba.gov/document/support--table-size-standards> (<https://www.sba.gov/document/support--table-size-standards>). The 150 employee size is easy to find in the SBA size standards; therefore, it is not necessary to include a reference to 13 CFR 121.201 (<https://www.ecfr.gov/current/title-13/section-121.201>) and footnote 18 in the FAR text associated with this rule.

Comment: One respondent recommended including “IDIQ” in the proposed rule for consistency with SBA regulations in referencing multiple-award contracts.

Response: Although SBA's regulations reference IDIQ after multiple-award contract, FAR 19.504 provides guidance on placing orders under multiple-award contracts; therefore, it is not necessary to add IDIQ at FAR 19.504(b). In addition, the definition of *multiple-award contract* at FAR 2.101 indicates that this kind of contract is an IDIQ contract.

4. OUTSIDE THE SCOPE

Comment: One respondent asked what acquisition options agencies have if an 8(a) participant is not eligible for the award of an option under a long-term 8(a) contract.

Response: This is outside of the scope of this rule.

C. Other Changes

Minor editorial changes were made at FAR 19.306(d), 19.307(d), and 19.308(d)(2).

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

This rule amends several solicitation provisions and contract clauses at FAR 52.204-8, 52.212-1, 52.212-5, 52.219-1, 52.219-18, and 52.219-28. However, this rule does not impose any new requirements on contracts at or below the SAT or for commercial products, or for commercial services, including commercially available off-the-shelf (COTS) items. The clauses continue to apply to acquisitions at or below the SAT, to acquisitions for commercial products and commercial services including COTS items.

IV. Expected Impact of the Rule

This rule will impact the operations of the Government and contractors as described in this section.

This rule will impact the Government with regard to long-term 8(a) contracts. Contracting officers will not be able to exercise options past the fifth year of long-term 8(a) contracts if the 8(a) contractor no longer qualifies for the 8(a) program. Contractors who are 8(a) participants with long-term contracts may find that the Government cannot exercise a fifth-year option on that contract if the contractor is no longer eligible for the 8(a) program.

Offerors who are information technology value-added resellers should be able to more easily understand the size standard that applies to them.

The “ostensible subcontractor rule” is implemented in this rule as a new ground for protest. Small business contractors must not be overly reliant on non-similarly situated small business subcontractors or have such a subcontractor perform primary and vital requirements of the contract. Therefore, a small business contractor must have the necessary expertise within its own organization.

This rule is not expected to result in any costs to contractors or offerors.

V. 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 (/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, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808 (<https://www.govinfo.gov/link/uscode/5/801>)) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804 (<https://www.govinfo.gov/link/uscode/5/804>).

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>). The FRFA is summarized as follows:

DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement several revisions made to the Small Business Administration (SBA) regulations in SBA's final rule published on November 29, 2019, at 84 FR 65647 (/citation/84-FR-65647). The revisions address the point in the procurement process at which small business size status is determined for offers for multiple-award contracts. SBA generally determines size status at the time of initial offer including price. However, for a solicitation for a multiple-award contract that does not require offers to include price or where price is not evaluated, SBA will determine size as of the date of initial offer, whether or not the offer includes price or the price is evaluated. The revisions also address the eligibility requirements for 8(a) participants under long-term contracts (*i.e.*, with a duration of more than five years including option periods). For long-term 8(a) contracts, contracting officers will be required to verify in the Dynamic Small Business Search (DSBS) or the System for Award Management (SAM) that the contractor is still an SBA-certified 8(a) participant no more than 120 days prior to the end of the fifth year of the contract. If the contractor is no longer an SBA-certified

8(a) participant, the contracting officer shall not exercise the option. In addition, SBA's revisions specified that the size standard for information technology value added resellers under North American Industry Classification System (NAICS) code 541519 is 150 employees. The revisions also address SBA's new grounds for a socioeconomic status protest based on an allegation that a contractor is unduly reliant on a small, non-similarly situated entity subcontractor or if such subcontractor performs the primary and vital requirements of the contract (the "ostensible subcontractor rule").

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

This rule will apply to small entities that do business with the Federal Government. According to the data in SAM, as of January 2022, 420,000 of the active entity registrations are for entities that are small business concerns for at least one NAICS code. This rule will impact 8(a) participants who are Federal contractors with contracts that have a duration of more than five years, including options. An analysis of the data in the Federal Procurement Data System (FPDS) indicates that, for fiscal years 2019 through 2021, an average of 326 long-term contracts (*i.e.*, greater than five years) were awarded to 279 unique entities each year under the 8(a) program. The rule may reduce the number of long-term contracts awarded to 8(a) participants by agencies that are concerned about having a contract in place beyond the □ fifth year. Contracts outside the 8(a) program will not have such obstacles to continued performance. However, SBA pointed out that Congress intended that 8(a) program participation be limited to nine years, and for 8(a) participants to leave the program and go on to participate successfully and independently in the Government contracting arena. Therefore, allowing contracting officers to continue to exercise options for 8(a) program participants under these circumstances would not meet Congressional intent.

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This rule will affect information technology value added resellers under NAICS code 54159. An analysis of the data in FPDS shows that, for fiscal years 2019 through 2021, an average of 699 unique large businesses and 1,129 unique small businesses were awarded contracts each year under NAICS code 541519.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

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

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

This 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. 3501-3521 (<https://www.govinfo.gov/link/uscode/44/3501>)).

List of Subjects in 48 CFR Parts 19 (<https://www.ecfr.gov/current/title-48/part-19>), 49 (<https://www.ecfr.gov/current/title-48/part-49>), 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 amend 48 CFR parts 19 (<https://www.ecfr.gov/current/title-48/part-19>), 49 (<https://www.ecfr.gov/current/title-48/part-49>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>) as set forth below:

1. The authority citation for 48 CFR parts 19 (<https://www.ecfr.gov/current/title-48/part-19>), 49 (<https://www.ecfr.gov/current/title-48/part-49>), 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 and 10 U.S.C. chapter 137 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 19—SMALL BUSINESS PROGRAMS

2. Amend section 19.102 by revising the last sentence of paragraph (a)(1) and adding paragraphs (a)(3) and (4) to read as follows:

19.102 Small business size standards and North American Industry Classification System codes.

(a) * * *

(1) * * * They are also available at <https://www.sba.gov/document/support--table-size-standards> (<https://www.sba.gov/document/support--table-size-standards>).

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(3) SBA determines the size status of a concern, including its affiliates, as of the date the concern represents that it is small to the contracting officer as part of its initial offer, which includes price.

(4) When an agency uses a solicitation for a multiple-award contract that does not require offers for the contract to include price, SBA determines size as of the date of initial offer for the multiple-award contract, whether or not the offer includes price or the price is evaluated. (See 13 CFR 121.404(a)(1)(iv) ([★*](https://www.ecfr.gov/current/title-13/section-121.404#p-121.404(a)(1)(iv)))).</p>
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19.301-1 [Amended]

3. Amend section 19.301-1 by—

- a.** Removing from paragraph (b) introductory text the phrase “initial offer” and adding “initial offer, (whether or not the offer includes price or the price is evaluated)” in its place; and
- b.** Removing from paragraph (e)(1) the phrase “for the contract” and adding “for the contract (whether or not the offer includes price or the price is evaluated (see 13 CFR 121.404(a)(1)(iv) ([#### **4. Amend section 19.306 by adding paragraph \(d\)\(3\) to read as follows:**](https://www.ecfr.gov/current/title-13/section-121.404#p-121.404(a)(1)(iv)))),” in its place.

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

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(3) SBA will consider protests for HUBZone set-aside or sole-source service contracts or orders, if a HUBZone prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1 ([, or if such subcontractor performs the primary and vital requirements of the contract. For allegations](https://www.ecfr.gov/current/title-13/section-125.1)

that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.302, and 13 CFR 121.103(h)(2) ([https://www.ecfr.gov/current/title-13/section-121.103#p-121.103\(h\)\(2\)\)](https://www.ecfr.gov/current/title-13/section-121.103#p-121.103(h)(2)))), which treats the pair as joint venturers for size determination purposes (the “ostensible subcontractor rule”).

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5. Amend section 19.307 by—

- a.** Removing from paragraph (d)(1) introductory text the phrase “service disabled” and adding “service-disabled” in its place;
- b.** Removing from paragraph (d)(1)(i) the phrases “service disabled” and “125.8; or” and adding “service-disabled” and “125.12;” in their places, respectively;
- c.** Removing from paragraph (d)(1)(ii) the phrase “such veteran.” and adding “such veteran; or” in its place; and
- d.** Adding paragraph (d)(1)(iii).

The addition reads as follows:

19.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.

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(iii) For set-aside or sole-source service contract or order ostensible subcontractor protests, the protester presents credible evidence of the alleged undue reliance on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1

(<https://www.ecfr.gov/current/title-13/section-125.1>), or credible evidence that the small non-similarly situated entity is performing the primary and vital requirements of the contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.302, and 13 CFR 121.103(h)(2) ([https://www.ecfr.gov/current/title-13/section-121.103#p-121.103\(h\)\(2\)\)](https://www.ecfr.gov/current/title-13/section-121.103#p-121.103(h)(2)))), which treats the pair as joint venturers for size determination purposes (the “ostensible subcontractor rule”).

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6. Amend section 19.308 by—

- a.** Removing from the end of paragraph (d)(1)(i) the word “or”;
- b.** Removing from the end of paragraph (d)(1)(ii) the phrase “EDWOSB contract.” and adding “EDWOSB contract; or” in its place; and
- c.** Adding paragraph (d)(1)(iii).

The addition reads as follows:

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.

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(iii) For WOSB or EDWOSB set-aside or sole-source service contracts or orders, the protest presents evidence that the prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1 (<https://www.ecfr.gov/current/title-13/section-125.1>), or a protest alleging that such subcontractor is performing the primary and vital requirements of a set-aside or sole-source WOSB or EDWOSB contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.302, and 13 CFR 121.103(h)(2) ([https://www.ecfr.gov/current/title-13/section-121.103#p-121.103\(h\)\(2\)\)](https://www.ecfr.gov/current/title-13/section-121.103#p-121.103(h)(2)))), which treats the pair as joint venturers □ for size determination purposes (the “ostensible subcontractor rule”).

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7. Amend section 19.504 by—

- a. Removing from the paragraph (b) heading the phrase “partial set-aside contracts.”, and adding the phrase “set-aside contracts-” in its place;
- b. Redesignating paragraphs (b)(1) and (2) as paragraphs (b)(2)(i) and (ii), respectively;
- c. Adding a new paragraph (b)(1); and
- d. Adding a paragraph heading to the newly redesignated paragraph (b)(2).

The addition and revision read as follows:

19.504 Orders under multiple-award contracts.

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(b) * * *

(1) *Orders under total set-aside contracts.* Under a total small business set-aside, contracting officers may at their discretion set aside orders for any of the small business socioeconomic concerns identified in 19.000(a)(3) provided that the requirements at paragraph (a) of this section, 19.502-2(b), and the specific program eligibility requirements are met.

(2) *Orders under partial set-aside contracts.*

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19.505 [Amended]

8. Amend section 19.505 by removing from paragraphs (c)(1)(ii) and (c)(2)(i) the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519” in its place.

9. Amend section 19.802 by adding two sentences at the end to read as follows:

19.802 Determining eligibility for the 8(a) program.

* * * SBA designates the concern as an 8(a) participant in the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). SBA's designation also appears in the System for Award Management (SAM).

10. Amend section 19.804-1 by—

a. Removing from the end of paragraph (a)(1) the word “and”;

b. Redesignating paragraph (a)(2) as paragraph (a)(3); and

c. Adding a new paragraph (a)(2).

The addition reads as follows:

19.804-1 Agency evaluation.

(a) * * *

(2) Length of contract, including option periods (see 19.812(d)); and

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11. Amend section 19.812 by—

a. Redesignating paragraph (d) as paragraph (e); and

b. Adding a new paragraph (d).

The addition reads as follows:

19.812 Contract administration.

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(d) For 8(a) contracts exceeding 5 years including options, the contracting officer shall verify in DSBS or SAM that the concern is an SBA-certified 8(a) participant no more than 120 days prior to the end of the fifth year of the contract. If the concern is not an SBA-certified 8(a) participant, the contracting officer shall not exercise the option (see 13 CFR 124.521(e)(2) ([https://www.ecfr.gov/current/title-13/section-124.521#p-124.521\(e\)\(2\)\)\)](https://www.ecfr.gov/current/title-13/section-124.521#p-124.521(e)(2))))).



PART 49—TERMINATION OF CONTRACTS

49.402-3 [Amended]

- 12.** Amend section 49.402-3 by removing from paragraph (e)(4) the phrase “Small Business Administration Regional” and adding “Small Business Administration Area” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 13.** Amend section 52.204-8 by—

- a.** Revising the date of the provision;
- b.** Removing from paragraph (a)(3) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place;
- c.** In Alternate I:
 - i.** Revising the date of Alternate I; and
 - ii.** Removing from paragraph (a)(2) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place.

The revisions read as follows:

52.204-8 Annual Representations and Certifications.

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Annual Representations and Certifications (Mar 2023)

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Alternate I ([MAR 2023 * * *

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14. Amend section 52.212-1 by—

a. Revising the date of the provision; and

b. Removing from paragraph (a) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place.

The revision reads as follows:

52.212-1 Instructions to Offerors—Commercial Products and Commercial Services.

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Instructions to Offerors—Commercial Products and Commercial Services (MAR 2023)

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15. Amend section 52.212-5 by—

a. Revising the date of the clause; and

- b.** Removing from paragraph (b)(22)(i) the date “(OCT 2022)” and adding “(MAR 2023)” in its place.

The revision reads as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

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Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (MAR 2023)

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16. Amend section 52.219-1 by—

- a.** Revising the date of the provision;

- b.** Removing from paragraph (b)(3) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place;

- c.** In Alternate II:

- i.** Revising the date of Alternate II; and

- ii.** Removing from paragraph (b)(2) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place.

The revisions read as follows:

52.219-1 Small Business Program Representations.

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Small Business Program Representations (MAR 2023)

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Alternate II (MAR 2023) * * *

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17. Amend section 52.219-18 by—**a.** Revising the date of Alternate I; and**b.** Removing from paragraph (iii) in Alternate I the phrase “ *Regional Office(s)* ” and adding “ *Area Office(s)* ” in its place.

The revision reads as follows:

52.219-18**Notification of Competition Limited to Eligible 8(a) Participants.**Start Printed
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Alternate I (MAR 2023)

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18. Amend section 52.219-28 by—**a.** Revising the date of the clause; and

b. Removing from paragraph (e) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place.

The revision reads as follows:

52.219-28 Post-Award Small Business Program Rerepresentation.

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Post-Award Small Business Program Rerepresentation (MAR 2023)

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