

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 97-07 Addendum; FAR Case 97-004B
Correction]

RIN 9000-AH59

Federal Acquisition Regulation;
Reform of Affirmative Action in Federal
Procurement; CorrectionsAGENCIES: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).ACTION: Interim rule; Correcting
amendments.

SUMMARY: The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have agreed to issue an addendum to correct Federal Acquisition Circular (FAC) 97-07 to make amendments to the Federal Acquisition Regulation (FAR) concerning programs for small disadvantaged business (SDB) concerns. These changes are needed to provide additional time for subcontractors to become certified under rules issued by the Small Business Administration. These amendments allow contractors acting in good faith to accept the self-representation of subcontractors as to their status as small disadvantaged business concerns. It is anticipated that by July 1, 1999, a sufficient number of firms will have been certified and the changes made by this rule rescinded. After that date, solicitations will require contractors to use certified SDBs as subcontractors to take advantage of the SDB Participation Program. No other aspects of FAC 97-07 are being modified.

DATES: *Effective Date:* January 1, 1999.*Applicability Date:* The policies, provisions, and clauses of this Addendum apply for all solicitations issued on or after January 1, 1999.*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before March 1, 1999 to be considered in the formulation of a final rule.**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-004B@gsa.gov

Please cite FAC 97-07 Addendum, FAR case 97-004B, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:Ms. Victoria Moss, Procurement Analyst
Federal Acquisition Policy Division,
General Services Administration,
1800 F Street, NW, Washington, DC
20405, Telephone: (202) 501-4764
orMr. Mike Sipple, Procurement Analyst,
Contract Policy and Administration,
Director, Defense Procurement,
Department of Defense 3060 Defense
Pentagon, Washington, DC 20301-
3060, Telephone: (703) 695-8567.For general information, call the FAR
Secretariat at (202) 501-4755.**SUPPLEMENTARY INFORMATION:****A. Background**

On July 1, 1998, DoD, GSA, and NASA issued FAC 97-07 to make amendments to the FAR concerning programs for small disadvantaged business concerns. This document revises the rule published at 63 FR 36120, July 1, 1998, to allow contractors acting in good faith to rely upon the self-representations of their subcontractors as to their status as a small disadvantaged business concern.

Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This action is necessary to amend regulations that will become effective on January 1, 1999, to reflect the current scarcity of certified small disadvantaged business subcontractors.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

These changes modify the manner in which a firm, acting as a subcontractor, may indicate that it is a small disadvantaged business concern (SDB). On June 30, 1998, the Small Business Administration (SBA) issued rules concerning the certification and eligibility of SDBs. SBA prepared and issued an analysis of that rule's impact on small entities at that time. The acquisition programs designed to assist SDB subcontractors were issued in Federal Acquisition Circular 97-07 at 63 FR 36120, July 1, 1998. At that time, an Initial Regulatory Flexibility Analysis was prepared discussing the impact of the programs. The changes in this Addendum do not affect the impact of

the acquisition programs on small entities; they merely revise the manner in which a firm is considered eligible under the programs. Therefore, the Initial Regulatory Flexibility Analysis published with FAC 97-07 is unaffected by these changes and remains valid.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: December 22, 1998.

Victoria Moss,*Acting Director, Federal Acquisition Policy Division.*

FEDERAL ACQUISITION CIRCULAR

FAC 97-07 Addendum

Federal Acquisition Circular (FAC) 97-07 Addendum is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The policies, provisions, and clauses of this Addendum are effective for all solicitations issued on or after January 1, 1999.

Dated: December 21, 1998.

Carol F. Covey,*Acting Director, Defense Procurement.***Ida M. Ustad,***Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: December 22, 1998.

James A. Balinskas,*Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.*

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

2. Section 19.001 is amended by revising the definition of "Small disadvantaged business concern" to read as follows:

19.001 Definitions.

* * * * *

Small disadvantaged business concern, as used in this part, means— (1) For prime contractors (except for 52.212-3(c)(2) and 52.219-1(b)(2) for general statistical purposes and 52.212-3(c)(7)(ii), 52.219-22(b)(2), and 52.219-23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and

(A) No material change in disadvantaged ownership and control has occurred since its certification;

(B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(C) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

(ii) It has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, a contractor must receive certification as an SDB by the SBA prior to contract award.

(2) For subcontractors, an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition and that it

meets the definition of a small disadvantaged business in 13 CFR 124.1002.

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3. Section 19.703 is amended by revising paragraph (b) to read as follows:

19.703 Eligibility requirements for participating in the program.

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(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small, small disadvantaged, or a woman-owned small business concern. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601 through 121.1608. Protests challenging a subcontractor's small disadvantaged business representation shall be filed in accordance with 13 CFR 124.1015 through 124.1022.

4. Section 19.1202-4 is amended by adding paragraph (c) to read as follows:

19.1202-4 Procedures.

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(c) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small disadvantaged business concern.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.219-8 is amended by revising paragraph (c) of the clause to read as follows:

52.219-8 Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns.

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Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns (Jan 1999)

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(c) As used in this clause, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern that represents, as part of its offer, that it meets the definition of a small disadvantaged business concern in 13 CFR 124.1002.

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6. Section 52.219-25 is amended by revising paragraph (a) of the clause to read as follows:

52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

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Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Jan 1999)

(a) Disadvantaged status for joint venture partners, team members, and subcontractors. This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners and teaming arrangement members through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner or team member, representing itself as a small disadvantaged business concern, is included in the SBA's on-line list of SDBs at http://www.sba.gov or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility. The Contractor acting in good faith may rely on a written representation of its subcontractor regarding the subcontractor's status as a small disadvantaged business concern as defined in 13 CFR 124.1002.

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[FR Doc. 98-34365 Filed 12-28-98; 8:45 am]

BILLING CODE 6820-EP-P