and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, except for: (1) Contract awards for which the lowest responsive and responsible bid of a United States firm exceeds the lowest responsive and responsible bid of a foreign firm by more than 20 percent, and (2) contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese firm.

B. Regulatory Flexibility Act

DoD certifies that these final rules 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:

List of Firms Not Eligible for Defense Contracts (DFARS Case 97–D325)—Few small entities are believed to subcontract with firms that are owned or controlled by the government of a terrorist country.

Direct Award of 8(a) Contracts (DFARS Case 98–D011)—The rule only affects the administrative procedures used to award 8(a) contracts.

Comprehensive Subcontracting Plans (DFARS Case 97–D323)—Small businesses are exempt from subcontracting plan requirements, and the rule does not change the obligation of large business concerns to maximize subcontracting opportunities for small business concerns.

Waiver of 10 U.S.C. 2534—United Kingdom (DFARS Case 98–D016)—There are no known small business manufacturers of the restricted air circuit breakers; defense appropriations acts presently impose domestic source restrictions on the acquisition of totally enclosed lifeboats and noncommercial ball and roller bearings; and the restrictions of 10 U.S.C. 2534(a) do not apply to acquisitions of commercial items incorporating ball or roller bearings.

Restructuring Costs (DFARS Case 97–D313) and Allowability of Costs for Restructuring Bonuses (DFARS Case 97–D312)—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-priced basis, and do not require application of the cost principles contained in these rules.

Streamlined Research and Development Contracting (DFARS Case 97–D002)—The rule merely provides an implementation of electronic contracting procedures already authorized by the FAR.

Construction in Foreign Countries (DFARS Case 97–D307)—The DFARS changes contained in this rule apply only to contracts for military construction on Kawjalein Atoll that are estimated to exceed $1,000,000; DoD awards approximately two such contracts annually.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements associated with DFARS Case 97–D307, Construction in Foreign Countries, for use through August 31, 2001, under OMB Control Number 0704–0255. The other rules do not contain any information collection requirements that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 213, 219, 225, 231, 235, 236, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rules Adopted as Final Without Change

PART 209—CONTRACTOR QUALIFICATIONS, AND PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Accordingly, the interim rule amending 48 CFR parts 209 and 252, which was published at 63 FR 14836 on March 27, 1998, is adopted as a final rule without change.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES, PART 219—SMALL BUSINESS PROGRAMS, PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES, AND PART 253—FORMS

Accordingly, the interim rule amending 48 CFR parts 213, 219, 252, and 253, which was published at 63 FR 33586 on June 19, 1998, is adopted as a final rule without change.

PART 219—SMALL BUSINESS PROGRAMS

Accordingly, the interim rule amending 48 CFR part 219, which was published at 63 FR 14640 on March 26, 1998, is adopted as a final rule without change.

PART 225—FOREIGN ACQUISITION, AND PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 63 FR 43887 on August 17, 1998, is adopted as a final rule without change.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Accordingly, the interim rule amending 48 CFR part 231, which was published at 62 FR 63035 on November 26, 1997, is adopted as a final rule without change.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Accordingly, the interim rule amending 48 CFR part 231, which was published at 63 FR 7308 on February 13, 1998, is adopted as a final rule without change.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Accordingly, the interim rule amending 48 CFR part 235, which was published at 63 FR 34605 on June 25, 1998, is adopted as a final rule without change.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS, AND PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Accordingly, the interim rule amending 48 CFR parts 236 and 252 at sections 236.102, 236.274, 236.570, 252.236–7010, and 252.236–7012, which was published at 63 FR 11522 on March 9, 1998, is adopted as a final rule without change.

[FR Doc. 98–31038 Filed 11–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 217, 219, 226, 236, 252, and Appendix I to Chapter 2

[DFARS Case 98–D021]

Defense Federal Acquisition Regulation Supplement; Reform of Affirmative Action in Federal Procurement, Part II

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) guidance concerning programs for small disadvantaged business (SDB) concerns. These amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement, and are consistent with the changes made to the Federal Acquisition Regulation (FAR) in Federal

Acquisition Circular (FAC) 97–07. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995).

DATES: *Effective Date:* January 1, 1999.

Applicability Date: The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after January 1, 1999, and all Mentor-Protégé agreements entered into on or after January 1, 1999.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before January 19, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 98–D021 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D021 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, PDUSD(A&T)DP(DAR), (703) 602–0131, or Mr. Mike Sipple, PDUSD(A&T)DP(CPA), (703) 695–8567. Please cite DFARS Case 98–D021.

SUPPLEMENTARY INFORMATION:

A. Background

In *Adarand,* the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any Federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling Government interest.

DoJ developed a proposed structure to reform affirmative action in Federal procurement designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand.* the DoJ proposal was published for public notice and comment (61 FR 26042, May 23, 1996). DoJ issued a notice that provided a response to the public comments (62 FR 25648, May 9, 1997). To implement the DoJ concept, two interim FAR rules and an interim DFARS rule were issued: FAC 97–06, effective October 1, 1998, implements a price evaluation adjustment for SDB concerns (63 FR 35719, June 30, 1998); FAC 97–07, effective January 1, 1999, implements an SDB participation program (63 FR 36120, July 1, 1998); and the rule published on August 6, 1998 (63 FR 41972), effective October 1, 1998, conforms the DFARS to FAC 97–06. This interim rule contains the revisions necessary to conform the DFARS to the interim FAR rule in FAC 97–07, and to the DoJ proposal implemented by the FAR rule.

B. Regulatory Flexibility Act

This interim rule is not expected to 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 most of the changes merely conform the DFARS to the FAR rule in FAC 97–07. Two source selection considerations for SDB concerns currently in the DFARS, but not in the FAR, are amended by this rule to conform to the DoJ model: Leader company contracting (DFARS 217.401); and architect-engineer (A–E) services (DFARS 236.602). These two changes are not expected to have a significant economic impact on a substantial number of small entities since: (1) Leader company contracting is infrequently used by DoD; and (2) the primary factor in A–E selection is the determination of the most highly qualified firm; the SDB consideration is one of several secondary source selection factors. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D021 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule amends the DFARS to conform it to the requirements of FAC 97–07, dated July 1, 1998, effective January 1, 1999. FAC 97–07 contains an interim rule amending the FAR to implement a DoJ proposal for reform of affirmative action in Federal procurement to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 115, S. Ct. 2097 (1995). The FAR rule contains an SDB participation program. Publication of an interim DFARS rule is necessary to conform the DFARS to the interim FAR rule effective January 1, 1999, and to the DoJ proposal implemented by the FAR rule. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 215, 217, 219, 226, 236, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215, 217, 219, 226, 236, 252, and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 215, 217, 219, 226, 236, 252, and Appendix I to subchapter I continue to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.304 is revised to read as follows:

215.304 Evaluation factors and significant subfactors.

(c)(i) In acquisitions that require use of the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101–2), the extent of participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business and historically black college or university and minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) Evaluation factors may include—

(1) The extent to which such firms are specifically identified in proposals;

(2) The extent of commitment to use such firms (for example, enforceable

commitments are to be weighted more heavily than non-enforceable ones);

(3) The complexity and variety of the work small firms are to perform;

(4) The realism of the proposal;

(5) Past performance of the offerors in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(6) The extent of participation of such firms in terms of the value of the total acquisition.

(B) Proposals addressing the extent of small business and historically black college or university and minority institution performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219–9 and should be structured to allow for consideration of offers from small businesses.

(C) When an evaluation includes the factor in paragraph (c)(i)(B)*(1)* of this section, the small businesses, historically black colleges or universities and minority institutions, and women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

(ii) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk indicates the likelihood of significant costs or savings.

PART 217—SPECIAL CONTRACTING METHODS

3. Section 217.401 is revised to read as follows:

217.401 General.

(1) When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company if—

(i) The follower company will be a subcontractor and the Standard Industrial Classification (SIC) Major Group of the acquisition is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)); or

(ii) The follower company will be a prime contractor and the SIC Major Group of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(2) If special effort is required by paragraph (1) of this section and an SDB is not selected as the follower company, the contracting officer shall document the contract file to reflect—

(i) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(ii) The rationale for selection of a non-SDB as the follower company.

PART 219—SMALL BUSINESS PROGRAMS

4. Section 219.001 is revised to read as follows:

219.001 Definitions.

Small disadvantaged business concern is defined:

(1) At FAR 52.219–23(a) (i.e., a firm is considered a small disadvantaged business (SDB) concern by receiving certification by the Small Business Administration and meeting the other listed criteria), except as specified in paragraph (2) of this definition.

(2) At FAR 52.219–23(a) or 52.219–1(b)(2) for the following purposes (i.e., a firm is considered an SDB concern by either receiving certification by the Small Business Administration and meeting the other listed criteria or self-representing its status for general statistical purposes):

(i) A higher customary progress payment rate for SDB concerns (see 232.501–1(a)(i) and 252.232–7004(c)).

(ii) A lower threshold for inclusion of customary progress payments in contracts with SDB concerns (see 232.502–1).

(iii) The prompt payment policy for SDB concerns in 232. 903 and 232.905(2).

(iv) Reporting contract actions with SDB concerns (''Type of Business'' on the DD Form 350, Individual Contracting Action Report (see 253.204–70(d)(5)(i)(A)) or ''Small Disadvantaged Business (SDB) Actions'' on the DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less (see 253.204–71(g)(2)).

5. Section 219.708 is amended by revising paragraph (c)(1) and removing paragraph (c)(2). The revised text reads as follows:

219.708 Solicitation provisions and contract clauses.

* * * * * * *

(c)(1) Do not use the clause at FAR 52.219–10, Incentive Subcontracting Program, in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).

6. Subpart 219.12 is added to read as follows:

Subpart 219.12—Small Disadvantaged Business Participation Program

Sec.
219.1203 Incentive subcontracting with small disadvantaged business concerns.
219.1204 Solicitation provisions and contract clauses.

219.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer shall encourage increased subcontracting opportunities for SDB concerns in negotiated acquisitions by providing monetary incentives in the SIC Major Groups for which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)). Incentives for exceeding SDB subcontracting targets shall be paid only if an SDB subcontracting target was exceeded as a result of actual subcontract awards to SDBs, and not a result of developmental assistance credit under the Pilot Mentor-Protégé Program (see Subpart 219.71).

219.1204 Solicitation provisions and contract clauses.

(c) The contracting officer shall, when contracting by negotiation, insert in solicitations and contracts containing the clause at FAR 52.219–25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, a clause substantially the same as the clause at FAR 52.219–26, Small Disadvantaged Business Participation Program-Incentive Subcontracting, when authorized (see FAR 19.1203). The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting officer shall not use the clause at FAR 52.219–26. Do not use award fee provisions in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).

PART 226—OTHER SOCIOECONOMIC PROGRAMS

7. Section 226.7007 is amended by revising paragraph (b) to read as follows:

226.7007 Goals and incentives for subcontracting with HBCU/MIs.

* * * * *

(b) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause similar to the clause at FAR 52.219–10, Incentive Subcontracting Program, when a subcontracting plan is required, and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for

historically black colleges or universities and minority institutions. The clause should include a separate goal for historically black colleges or universities and minority institutions.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

8. Section 236.602–1 is amended by revising paragraph (a)(i)(6)(C) to read as follows:

236.602–1 Selection criteria.

(a) * * *

(i) * * *

(6) * * *

(C) Consider the extent to which potential contractors identify and commit to small business, to small disadvantaged business (SDB) if the Standard Industrial Classification Major Group of the subcontracted effort is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.210(b)), and to historically black college or university and minority institution performance as subcontractors.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

9. Section 252.212–7001 is amended by revising the clause date to read ''(JAN 1999)'', and by removing the entry at 252.219–7005.

252.219–7005 [Removed and Reserved]

10. Section 252.219–7005 is removed and reserved.

Appendix I to Chapter 2—[Amended]

11. Appendix I to Chapter 2 is amended by revising Section I–104 to read as follows:

Appendix I—Policy and Procedures for the DOD Pilot Mentor-Protégé Program

* * * * *

I–104 Eligibility requirements for a protégé firm.

(a) An entity may qualify as a protégé firm if it is—

(1) An SDB concern as defined at 219.001, paragraph (1) of the definition of ''small disadvantaged business concern,'' which is—

(i) Eligible for the award of Federal contracts; and

(ii) A small business according to the SBA size standard for the Standard Industrial Classification (SIC) code that represents the contemplated supplies or services to be provided by the protégé firm to the mentor firm; or

(2) A qualified organization employing the severely disabled as defined in Pub. L. 102–172, section 8064A.

(b) A protégé firm may self-certify to a mentor firm that it meets the eligibility requirements in paragraph (a) (1) or (2) of this section. Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (a) (1) or (2) of this section, except for a protégé's status as a small disadvantaged business concern (see FAR 19.703(b)).

(c) A protégé firm may have only one active mentor-protégé agreement.

[FR Doc. 98–31039 Filed 11–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980505118–8286–02; I.D. 110598B]

RIN 0648–AL14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Extension of Effective Date and Amendment of Bycatch Reduction Device Certification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; extension of expiration date; amendment; request for comments.

SUMMARY: An interim rule is in effect through November 16, 1998, that certifies the Jones-Davis and Gulf fisheye bycatch reduction devices (BRDs) for use in the Gulf of Mexico shrimp fishery. NMFS extends the interim rule through May 15, 1999, because conditions requiring the interim rule to reduce overfishing remain unchanged. NMFS also amends the interim rule regarding the specifications for the Jones-Davis, fisheye, and Gulf fisheye BRDs. The intended effects of this rule are to provide flexibility to Gulf shrimp trawlers for complying with the requirement to use a BRD and to maximize the effectiveness of BRDs. Providing a variety of certified BRDs will allow shrimpers to select a BRD based on how it matches the operating conditions their vessel encounters. This should enhance compliance, help minimize shrimp loss, and further increase bycatch reduction and, thus, further reduce overfishing of red snapper.

DATES: The expiration date for the interim rule published at 63 FR 27499, May 19, 1998, is extended to May 15, 1999. The amendment to Appendix D to part 622 that suspends paragraph E and adds paragraph F is effective November 17, 1998, through May 15, 1999. The amendment to Appendix D to part 622 that suspends paragraphs C.2. and D.2. and adds paragraphs C.3. and D.3. is effective November 27, 1998, through May 15, 1999.

ADDRESSES: Comments on this interim rule must be mailed to, and copies of documents supporting this rule may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702. Requests for copies of construction and installation instructions for the Jones-Davis, fisheye, and Gulf fisheye BRDs should be addressed to the Chief, Harvesting Systems Division, Mississippi Laboratories, Southeast Fisheries Science Center, NMFS, P.O. Drawer 1207, Pascagoula, MS 39568–1207.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, phone: 727–570–5305 or fax: 727–570–5583.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under section 305(c)(1) of the Magnuson-Stevens Act, NMFS published an interim rule (63 FR 27499, May 19, 1998) that certified the Jones-Davis and Gulf fisheye BRDs for use in the Gulf of Mexico shrimp fishery. Because conditions requiring the interim rule to reduce overfishing remain unchanged, NMFS extends the effective date of the interim rule through May 15, 1999, in accordance with section 305(c)(3)(B) of the Magnuson-Stevens Act.

In addition, NMFS amends Appendix D to Part 622—Specifications for Certified BRDs to revise the minimum construction and installation requirements for the Jones-Davis, fisheye, and Gulf fisheye BRDs. For the fisheye and Gulf fisheye BRDs, NMFS is prohibiting any part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) from overlapping, and thus obstructing, the fisheye escape opening. This will help to ensure effective bycatch reduction. For the Jones-Davis BRD, NMFS is adding alternative methods for constructing the 24–inch (61.0–cm) hoop and the funnel and