requester has a commercial interest that would be furthered by the requested disclosure. NSF will consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. NSF ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request.

§ 612.11 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: April 7, 2009.

Amy Northcutt,

Deputy General Counsel.

[FR Doc. E9–8262 Filed 4–10–09; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19 and 52

[FAR Case 2006–005; Docket 2009–0014; Sequence 1]

RIN 9000–AL18

Federal Acquisition Regulation; FAR Case 2006–005, HUBZone Program Revisions

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement revisions to the Small Business Administration's HUBZone Program as a result of revisions to the Small Business Administration's regulations.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before June 12, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–005 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2006–005'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2006–005. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2006–005'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–005 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Procurement Analyst, at (202) 501–0044 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–005.

SUPPLEMENTARY INFORMATION:

A. Background

On May 24, 2004, the Small Business Administration (SBA) published a final rule in the **Federal Register** at 69 FR 29411, and on August 30, 2005, an interim rule at 70 FR 51243 amending its HUBZone regulations at 13 CFR Part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act, 2005, and other various policy changes. This rule proposes to amend the FAR, as follows, to implement changes in the HUBZone regulations:

- FAR 19.1303(d), Status as a qualified HUBZone small business concern; 52.219–3, Notice of Total HUBZone Set-Aside; and 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, are revised to stipulate that to be eligible for a HUBZone contract, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award. SBA revised the HUBZone regulations to require HUBZone small business concerns to ''certify,'' at the time of their initial offers and again at the time of contract award, their HUBZone small business concern status. While the SBA regulations use the term ''certify,'' the certification is intended to be a ''representation'' as used in the FAR. Small business concern offerors are already required to ''represent'' their HUBZone small business concern status at the time of their initial offer.
- FAR 52.219–3 and 52.219–4 are revised to add a requirement that the HUBZone concern provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility.
- The performance of work requirements of sections 52.219–3 and 52.219–4 are revised to be consistent with the SBA HUBZone regulations. Alternate I would be used if there are not at least two HUBZones that can meet the 50 percent requirement. FAR 19.1308, Performance of work requirements (limitations on subcontracting), is also revised to reflect the changes in the performance of work requirements.
- The definition of ''HUBZone contract,'' which is used in the SBA

regulations, is added at section 2.101, Definitions.

This rule also proposes to revise the FAR as follows:

• Adds ''qualified base closure areas'' and ''redesignated areas'' to the list of HUBZone locations in the definition of ''HUBZone'' at section 2.101 as required by the Small Business Reauthorization Act of 2000 and the Consolidated Appropriations Act, 2005.

• Adds ''HUBZone joint ventures'' to the list of affiliates that are controlled through contractual relationships at section 19.101, Explanation of terms, to recognize that HUBZone joint ventures, comprised of members who are individually small under the appropriate size standard, can qualify as HUBZone small business concerns when the aggregate total of the joint venture is small under the size standard for the NAICS code assigned to the contract, or alternative, when the aggregate total of the joint venture is not small, and then either: (1) for a procurement having a revenue-based size standard, the estimated contract value exceeds half the size standard corresponding to the NAICS code assigned to the contract; or (2) for a procurement having an employee-based size standard, the estimated contract value exceeds $10 million.

• Adds a definition in Subpart 19.3, Determination of Small Business Status for Small Business Programs, for ''interested party'' and a notice that SBA will dismiss protests from offerors SBA determines are not ''interested parties.''

• Changes the protest procedures in 19.306, Protesting a firm's status as a HUBZone small business concern, to require protests to be ''submitted'' instead of ''received'' by certain specified dates consistent with SBA regulations.

• At 19.800, General, removes an obsolete reference to priority of HUBZone 8(a) concerns, deleted from SBA regulations.

• Adds options for obtaining information on HUBZone small business concerns at 19.1303, Status as a qualified HUBZone small business concern.

• Changes the nonmanufacturer rule at 19.102, Size standards, paragraph (f)(8), 19.1303(e), 52.219–3(e), and 52.219–4(f) to be consistent with SBA HUBZone regulations.

• Changes the HUBZone set-aside procedures at 19.1305 to business days, and changes 19.1305(e)(3), HUBZone set-aside procedures, to require SBA to file its formal appeal with the head of the agency.

• Changes procedures for HUBZone sole source awards at 19.1306, HUBZone sole source awards, to be consistent with the HUBZone regulations.

• Adds procedures at 19.1307, Price evaluation preference for HUBZone small business concerns, and 52.219–4 for how to make award when, after considering the price evaluation preference, an offer submitted by a qualified HUBZone is equal to an offer submitted by a large business.

• Retitles clause 52.219–3, ''Notice of Total HUBZone Set-Aside,'' to ''Notice of Total HUBZone Set-Aside or Sole Source Award,'' and clarifies the clause prescription for sole source awards to implement the performance of the work requirements of the clause in sole source HUBZone awards.

• In 52.219–3 and 52–219–4, adds a reference to SBA definitions on limitations on subcontracting.

• Adds to 52.219–8(d), Utilization of Small Business Concerns, the requirement that the contractor shall confirm that a subcontractor is certified by SBA as a HUBZone small business by accessing the Central Contractor Registration database or contacting SBA. Additional language to 52.219–8(d) requires that for a competitive subcontract, the contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract to the successful subcontract offer.

In addition to these HUBZone small business changes, this rule proposes to amend the FAR as follows:

• Changes the term ''8(a) program'' at 19.000, Scope of part to ''8(a) business development program'' to reflect the complete title of the program. To avoid confusion, however, other references to the 8(a) program are unchanged since nothing other than the title of the program is changed.

• Deletes the terminology ''acquisition and property sale assistance'' from ''joint venture—acquisition and property sales assistance'' at 19.101 because the term ''acquisition'' added no meaning and ''property sales'' are beyond the scope of the FAR. The proposed rule also deletes the other reference to a ''property sale'' in the same paragraph.

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

B. Regulatory Flexibility Act

On May 24, 2004, the Small Business Administration (SBA) published a final rule in the **Federal Register** at 69 FR 29411, and on August 30, 2005, an interim rule at 70 FR 51243 amending its HUBZone regulations at 13 CFR Part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act, 2005, and other various policy changes. This rule proposes to revise the Federal Acquisition Regulation (FAR) in order to update the FAR to comply with the Small Business Administration's regulations as they pertain to acquisition.

The changes may 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.*

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The reason these changes may have a significant economic impact on a substantial number of small entities is because the small entities must comply with additional HUBZone requirements as discussed below. In addition, the proposed rule adds ''qualified base closure areas'' and ''redesignated areas'' to the list of HUBZone locations in the definition of ''HUBZone''. This means that there will be more qualified HUBZone contractors competing for HUBZone contracts. The analysis is summarized as follows:

The proposed FAR rule requires a HUBZone small business concern to be eligible for the HUBZone Program both at the time of its initial offer and at the time of contract award in addition to requiring the HUBZone concern to provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility. These requirements will eliminate some small businesses that are not eligible in both instances. The requirement for a HUBZone small business concern to provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility will eliminate those vendors that are no longer a HUBZone concern. This will result in those HUBZone concerns that are still eligible to compete having to compete only among other eligible HUBZone concerns, thus increasing their chances for award.

In addition, the proposed rule impacts some small business concerns by revising the FAR to state that except for construction or service contracts, when the total value of the contract exceeds

$25,000, a HUBZone small business concern nonmanufacturer must agree to furnish in performing the contract only end items manufactured or produced by HUBZone small business manufacturer concerns. In SBA's final rule dated August 30, 2005, SBA states that it is difficult to obtain a precise quantitative estimate of the impact these changes might have on small businesses. However, SBA estimates that 220 counties will be added as HUBZones a result of base closures.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 19 and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2006–005), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 2, 19 and 52

Government procurement.

Dated: March 20, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 19 and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b)(2) by revising the definition ''HUBZone''; adding, in alphabetical order, the definition ''HUBZone contract''; and adding a second sentence to the definition ''HUBZone small business concern''. The revised and added text read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

HUBZone means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, or redesignated areas, as defined in 13 CFR 126.103.

HUBZone contract means a contract awarded to a ''HUBZone small business'' concern through any of the following procurement methods:

(1) A sole source award to a HUBZone small business concern;

(2) Set-aside awards based on competition restricted to HUBZone small business concerns; or

(3) Awards to HUBZone small business concerns through full and open competition after a price evaluation preference in favor of HUBZone small business concerns.

HUBZone small business concern * * * 13 CFR 126.103.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

3. Amend section 19.000 by revising paragraph (a)(6) to read as follows:

19.000 Scope of part.

(a) * * *

(6) The ''8(a)'' business development program (hereafter referred to as 8(a) program), under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;

* * * * *

4. Amend section 19.101, in the definition ''Affiliates'' by redesignating paragraphs (7)(ii) through (7)(v) as (7)(iii) through (7)(vi), respectively, and adding a new paragraph (7)(ii); and revising the paragraph heading and first sentence of the newly redesignated paragraph (7)(iii) to read as follows:

19.101 Explanation of terms.

* * * * *

Affiliates. * * *

(7) * * *

(ii) *HUBZone joint venture.* A HUBZone joint venture of two or more HUBZone small business concerns may submit an offer for a HUBZone contract as long as each concern is small under the size standard corresponding to the NAICS code assigned to the requirement, provided one of the following conditions apply:

(A) The aggregate total of the joint venture is small under the size standard corresponding to the NAICS code assigned to the contract.

(B) The aggregate total of the joint venture is not small under the size standard corresponding to the NAICS code assigned to the contract and either—

(*1*) For a revenue-based size standard, the estimated contract value exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(*2*) For an employee-based size standard, the estimated contract value exceeds $10 million.

(iii) *Joint venture.* Concerns submitting offers on a particular acquisition as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. * * *

* * * * *

5. Amend section 19.102 by adding paragraph (f)(8) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(8) For non-manufacturer rules pertaining to HUBZone contracts, see 19.1303(e).

* * * * *

6. Revise section 19.306 to read as follows:

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

(a) *Definition* as used in this section—

Interested party has the meaning given in 13 CFR 126.103.

(b) *HUBZone Small Business Status.* (1) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone small business concern status.

(2) For all other acquisitions, an offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's HUBZone small business concern status.

(c) Protests relating to whether a HUBZone small business concern is a small business for purposes of any Federal program are subject to the procedures of subpart 19.3. Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

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

Administrator for the HUBZone Program (AA/HUB).

(e) The protest of an offeror that is an interested party must be submitted by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest submitted after these time limits is untimely, unless it is submitted by the SBA or the contracting officer. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(f) Except for premature protests, the contracting officer shall forward all protests received, notwithstanding whether the contracting officer believes that the protest is not sufficiently specific, timely, or submitted by an interested party. The contracting officer shall also forward a referral letter with the information required by 13 CFR 126.801(e).

(g) Protests may be submitted in person or by facsimile, express delivery service, or U.S. mail (postmarked within the applicable time period) to: Associate Administrator/Historically Underutilized Business, AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; Fax (202) 205–7167. The AA/HUB will notify the protester and the contracting officer that the protest was received and indicate whether the protest will be processed or dismissed for lack of timeliness or specificity. A protest will be dismissed if SBA determines the protester is not an interested party.

(h) SBA will determine the HUBZone status of the protested HUBZone small business concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(i) SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Deputy Administrator for Government Contracting and Business Development (ADA/GC&BD).

(j) The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's ADA/GC&BD. The ADA/GC&BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the 5-day period.

(k) The appeal must be in writing. The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the AA/HUB failed to consider.

(l) The party appealing the decision must provide notice of the appeal to the contracting officer and either the protested HUBZone small business concern or the original protester, as appropriate. SBA will not consider additional information or changed circumstances that were not disclosed at the time of the AA/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

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

7. Amend section 19.703 by revising paragraph (d)(1)(i) to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(d) * * *

(1) * * *

(i) HUBZone web page at *http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm* or *https://eweb1.sba.gov/hubzone/internet/general/approved-firms.cfm;*

* * * * *

19.800 [Amended]

8. Amend section 19.800 by removing the second sentence of paragraph (e).

19.803 [Amended]

9. Amend section 19.803 by removing from the end of paragraph (c) ''(but see 19.800(e))''.

19.804–3 [Amended]

10. Amend section 19.804–3 by removing from the end of paragraph (a) ''(AA)/8(a)BD'' and adding ''AA/BD'' in its place.

19.805–1 [Amended]

11. Amend section 19.805–1 by removing from paragraph (d) ''(AA/8(a)BD)'' each time it appears and adding ''AA/BD'' in its place.

12. Amend section 19.1301 by revising paragraph (a) to read as follows:

19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program.

* * * * *

13. Amend section 19.1303 by revising the section heading and paragraphs (b), (c), and (d) and adding paragraph (e). The revised and added text read as follows:

19.1303 Status as a HUBZone small business concern.

* * * * *

(b) If the SBA determines that a concern is a HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns *https://eweb1.sba.gov/hubzone/internet/general/approved-firms.cfm*. Only firms on the list are HUBZone small business concerns, eligible for HUBZone preferences. HUBZone preferences apply without regard to the place of performance. Information on HUBZone small business concerns can also be obtained at *http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm* or by writing to the Associate Administrator for the HUBZone Program (AA/HUB) at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at *hubzone@sba.gov*.

(c) A joint venture (see 19.101) may be considered a HUBZone small business concern if it meets the criteria in the explanation of affiliates in 19.101.

(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award.

(e) A HUBZone small business concern may submit an offer for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at 13 CFR 121.406(b)(1) and if the small manufacturer providing the end item is also a HUBZone small business concern.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(2) For HUBZone contracts at or below $25,000 in total value, a HUBZone small business concern may supply the end item of any manufacturer, including a large business, so long as the product acquired is manufactured or produced in the United States.

14. Amend section 19.1305 by removing from paragraph (a) ''A participating agency'' and adding ''The'' in its place; and revising paragraphs (c) and (e) to read as follows:

19.1305 HUBZone set-aside procedures.

* * * * *

(c) A contracting officer may set aside acquisitions exceeding the micro-purchase threshold that do not exceed the simplified acquisition threshold for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

* * * * *

(e) The procedures at 19.202–1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section.

(1) When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 business days of receiving the contracting officer's notice of rejection.

(2) Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist.

(3) Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the agency, or the appeal will be deemed withdrawn. The head of the agency shall reply to SBA within 15 business days of receiving the appeal. The decision of the head of the agency shall be final.

15. Amend section 19.1306 by revising paragraph (a) to read as follows:

19.1306 HUBZone sole source awards.

(a) An agency contracting officer may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides (see Subpart 19.5), provided none of the exclusions at 19.1304 apply and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

(2) The anticipated price of the contract, including options, will not exceed—

(i) $5.5 million for a requirement within the NAICS codes for manufacturing; or

(ii) $3.5 million for a requirement within all other NAICS codes;

(3) The acquisition is greater than the simplified acquisition threshold (see part 13);

(4) The HUBZone small business concern has been determined to be a responsible contractor with respect to performance; and

(5) Award can be made at a fair and reasonable price.

* * * * *

16. Amend section 19.307 by adding paragraph (e) to read as follows:

19.1307 Price evaluation preference for HUBZone small business concerns.

* * * * *

(e) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, the contracting officer shall award the contract to the HUBZone small business concern.

19.1308 [Redesignated as 19.1309]

17. Redesignate section 19.1308 as 19.1309; and add a new section 19.1308 to read as follows:

19.1308 Performance of work requirements (limitations on subcontracting).

(a) Before issuing a solicitation for general construction or construction by special trade contractors, the contracting officer must determine if at least two HUBZone small business concerns can individually perform at least 50 percent of the cost of contract performance incurred for personnel, using its own employees or subcontract employees of other HUBZone small business concerns. If not, the clause at 52.219–3 Notice of Total HUBZone Set-Aside or Sole Source Award, or 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, shall be used, as applicable, with its Alternate I (see 19.1309).

(b) See 13 CFR 125.6 for definitions of terms used in paragraph (a) of this section.

18. Revise the newly designated section 19.1309 to read as follows:

19.1309 Contract clauses.

(a) The contracting officer shall insert the clause 52.219–3, Notice of Total HUBZone Set-Aside or Sole Source Award, in solicitations and contracts for acquisitions that are set aside for, or awarded on a sole source basis to, HUBZone small business concerns under 19.1305 or 19.1306. The contracting officer shall insert the clause with its Alternate I if market research indicates that there are not at least two HUBZone small business concerns that can meet the requirements of 19.1308.

(b) The contracting officer shall insert the clause at FAR 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition. The clause shall not be used in acquisitions that do not exceed the simplified acquisition threshold. The contracting officer shall insert the clause with its Alternate I if market research indicates that there are not at least two HUBZone small business concerns that can meet the requirements of 19.1308.

PART 33—PROTESTS, DISPUTES, AND APPEALS

19. Amend section 33.102 by revising the second sentence of paragraph (a) to read as follows:

33.102 General.

(a) * * * (See 19.302 for protests of small business status, 19.305 for protests of disadvantaged business status, 19.306 for protests of HUBZone small business status, and 19.307 for protests of service-disabled veteran-owned small business status.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

20. Amend section 52.212–3 by revising the date of the provision; removing from paragraph (c)(10)(i) the word ''change'' and adding ''changes'' in its place and removing the word ''has'' and adding ''have'' in its place; and revising paragraph (c)(10)(ii). The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Date)

* * * * *

(c) * * *

(10) * * *

(ii) It □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [*The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:* _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

* * * * *

(End of provision)

21. Amend section 52.212–5 by revising the date of the clause, paragraphs (b)(3), (b)(4), and (b)(8); and removing from paragraph (e)(1)(ii) ''Feb 2009'' and adding ''(Date)'' in its place. The revised text reads as follows:

52.212–5 Contract Terms and Conditions required to implement Statutes or Executive Orders—Commercial items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DATE)

* * * * *

(b) * * *

____(3) 52.219–3, Notice of Total HUBZone Set-Aside or Sole Source Award (Date) (15 U.S.C. 657a).

____(4) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Date) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

* * * * *

___(8) 52.219–8, Utilization of Small Business Concerns (Date) (15 U.S.C. 637(d)(2) and (3)).

* * * * *

(End of clause)

22. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(vi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (DATE)

* * * * *

(a) * * *

(2) * * *

(vi) 52.244–6, Subcontracts for Commercial Items (Date).

* * * * *

(End of clause)

23. Amend section 52.219–1 by revising the date of the clause and paragraphs (b)(6)(i) and (b)(6)(ii) to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

SMALL BUSINESS PROGRAM REPRESENTATIONS (DATE)

* * * * *

(b) * * *

(6) * * *

(i) It □ is, □ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration; and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [*The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:* _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

* * * * *

24. Revise section 52.219–3 to read as follows:

52.219–3 Notice of Total HUBZone Set-Aside or Sole Source Award.

As prescribed in 19.1309(a), insert the following clause:

NOTICE OF TOTAL HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (DATE)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (c).

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) *Agreement.* A HUBZone small business concern agrees that, in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 50 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or on a combination of the concern's employees and employees of HUBZone small business concern subcontractors. At least 15 percent of the cost of contract performance incurred for personnel will be spent on the concern's employees. No more than 50 percent of the cost of contract performance incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 50 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or on a combination of the concern's employees and employees of HUBZone small business concern subcontractors. At least 25 percent of the cost of contract performance incurred for personnel will be spent on the concern's employees. No more than 50 percent of the cost of contract performance incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause will be performed by the aggregate of the HUBZone small business participants.

(e)(1) When the total value of the contract exceeds $25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than $25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs 1 and 2 do not apply in connection with construction or service contracts.

(f) Notice. If this solicitation has been set-aside for HUBZone small business concerns or the price evaluation preference for HUBZone small business concerns applies, the HUBZone small business offeror acknowledges the requirement that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of Clause)

Alternate I (Date). As prescribed in 19.1309(a), substitute the following paragraphs (c)(3) and (c)(4) for paragraphs (c)(3) and (c)(4) of the basic clause:

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees.

25. Amend section 52.219–4 by—

a. Revising the prescription, date of the clause, and paragraph (a);

b. Adding paragraph (b)(4);

c. Removing from paragraph (c) ''paragraph (d) of'' and adding ''paragraphs (d) and (e) of'' in its place;

d. Revising paragraphs (d)(3), (d)(4), (e) and (f);

e. Adding paragraph (g) and Alternate I.

The revised and added text reads as follows:

52.219–4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

As prescribed in 19.1309(b), insert the following clause:

NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (DATE)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) * * *

(4) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(d) * * *

(3) General construction, at least 50 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or on a combination of the concern's employees and employees of HUBZone small business concern subcontractors. At least 15 percent of the cost of contract performance incurred for personnel will be spent on the concern's employees. No more than 50 percent of the cost of contract performance incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 50 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or on a combination of the concern's employees and employees of HUBZone small business concern subcontractors. At least 25 percent of the cost of contract performance incurred for personnel will be spent on the concern's employees. No more than 50 percent of the cost of contract performance incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)(1) When the total value of the contract exceeds $25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than $25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs 1 and 2 do not apply in connection with construction or service contracts.

(g) *Notice.* If this solicitation has been set aside for HUBZone small business concerns or the price evaluation preference for HUBZone small business concerns applies, the HUBZone small business offeror acknowledges the requirement that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of Clause)

Alternate I (Date). As prescribed in 19.1309(b), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees.

26. Amend section 52.219–8 by revising the date of the clause and paragraph (d) to read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

UTILIZATION OF SMALL BUSINESS CONCERNS (DATE)

* * * * *

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone web page at *http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm*;

(ii) In writing to the—AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) E-mail at *hubzone@sba.gov*.

(3) Upon determination of the successful subcontract offeror for a competitive subcontract, the Contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(End of clause)

52.244–6 [Amended]

27. Amend section 52.244–6 by removing from the clause heading ''(Dec 2008)'' and adding ''(Date)'' in its place; and by removing from paragraph (c)(1)(ii) ''(May 2004)'' and adding ''(Date)'' in its place.

[FR Doc. E9–8318 Filed 4–10–09; 8:45 am]

BILLING CODE 6820–EP–P