DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 36, 52, and 53

[FAC 2005–77; FAR Case 2009–016; Item I; Docket 2011–0090, Sequence 1]

RIN 9000–AM05

Federal Acquisition Regulation; Federal Contracting Programs for Minority-Owned and Other Small Businesses

AGENCIES: 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 remove certain coverage involving procurements with small disadvantaged business (SDB) concerns and certain institutions of higher education that is based on authority which has expired and been found to be unconstitutional by the Court of Appeals for the Federal Circuit. These changes harmonize the FAR with current statutory authorities.

DATES: *Effective:* October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–77, FAR Case 2009–016.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 55849 on September 9, 2011, to remove certain procurement mechanisms authorized by section 1207 of the National Defense Authorization Act for Fiscal Year (FY) 1987, Public Law 99–661, (10 U.S.C. 2323) from the FAR. The basis for this action is the U.S. Court of Appeals for the Federal Circuit's ruling on November 4, 2008, which found the current 10 U.S.C. 2323 to be unconstitutional. *Rothe Development Corp.* v. *U.S. Department of Defense, et al,* 545 F.3d 1023 (Fed. Cir. 2008) (*Rothe*). On February 27, 2009, the United States District Court, Western District of Texas, San Antonio (the Court), pursuant to instructions from the U.S. Court of Appeals for the Federal Circuit, declared the current 10 U.S.C. 2323 unconstitutional and enjoined its further application in DoD, U.S. Coast Guard, and NASA procurements. *Rothe Development Corp.* v. *U.S. Department of Defense,* SA–98–CV–1011–XR (W.D. TX), 606 F.Supp.2d 648 (W.D.Tex., 2009).

The Court's injunction, coupled with the expiration of the law on September 30, 2009, necessitates the removal of all language in the FAR deriving its authority solely from 10 U.S.C. 2323. This includes FAR subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns, and FAR subpart 19.12, Small Disadvantaged Business Participation Program. However, the other policies, practices, and programs that agencies have been relying on to encourage SDB participation in the Federal marketplace since the Court of Appeals decision in Rothe remain in full effect, including the Government-wide goal of awarding not less than five percent of Federal contracting dollars to SDBs for both prime and subcontract awards, as required by section 15(g) of the Small Business Act, Public Law 85–536, as amended, (15 U.S.C. 644(g)).

In addition, section 8(d)(4)(E) of the Small Business Act (15 U.S.C. 637(d)(4)(E)) authorizes Federal agencies to provide incentives for encouraging prime contractors to subcontract with any type of small business, which includes SDBs, qualified Historically Underutilized Business Zone (HUBZone) small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses (SDVOSBs), and women-owned small businesses (WOSBs). To mirror the statutory authority's coverage of all small businesses, the FAR's coverage allowing monetary incentives for businesses subcontracting with SDBs (currently in FAR 19.1203) has been incorporated into the overall incentive subcontracting program at FAR subpart 19.7. This provision, along with the accompanying FAR clause 52.219–10, Incentive Subcontracting Program (authorized to be included in Federal solicitations and contracts that require subcontracting plans), provide guidance for the use of incentives to encourage prime contractors to expand their subcontracting opportunities with all small businesses, including SDBs.

The procurement mechanism found in FAR 19.1202, which allows an SDB to receive credit as an evaluation factor or subfactor during source selection for its status as an SDB when competing for a prime contract, is deleted in its entirety as its authority derived solely from 10 U.S.C. 2323. However, there is nothing in this final rule that precludes an agency from using evaluation factors and subfactors for subcontracting. Small Business Administration's (SBA) regulations (13 CFR 125.3(g)) allow the use of small business as an evaluation factor or subfactor for an offeror's proposed approach to subcontracting with any small businesses, including SDBs, WOSBs, HUBZone small businesses, and SDVOSBs. As part of a recently opened FAR case 2014–003, Small Business Subcontracting Improvements, to implement sections 1321 and 1322 of the Small Business Jobs Act, including SBA's regulations relating to these sections, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are conferring with SBA to consider if it would be helpful to develop guidance in the FAR regarding the use of such source selection factors and subfactors.

To clarify the purpose and intent of this FAR change, Office of Federal Procurement Policy (OFPP) held outreach sessions with internal and external stakeholders of the small disadvantaged business community to discuss concerns, dispel misconceptions about the rule, clarify the basis of the change, and restate available programs and existing obligations under the Small Business Act.

II. Discussion and Analysis

The Councils reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The changes made to the proposed rule reflected in the final rule are summarized as follows:

- The definition of a ''small disadvantaged business concern'' at FAR 2.101(b)(2), 52.219–1(a), and 52.219–8(a), has been clarified, and added to 52.212–3(a);
- The definition of ''historically black college or university'' at FAR 2.101 and 52.226–2 has been amended to delete the inclusion of nonprofit research institutions that were an integral part of such a college or university before November 14, 1986, from the definition.
- FAR 19.000(a)(8), which was inadvertently omitted in the proposed rule, has been partially reinstated;
- FAR 19.304 and 19.305 have been revised to ensure the guidance is aligned with the subject matter of these sections;

• FAR 19.1307(d) and FAR 52.219–4(b)(3) have been removed;

• The definitions included at FAR 52.219–1(c), and 52.219–8(c) were moved to 52.219–1(a) and 52.219–8(a), respectively;

• FAR 52.219–9(l)(2)(iii) and its Alternate III (l)(2)(iii) Requirement for the Year-End Supplementary Report for Small Disadvantaged Businesses, have been removed; and

• The Standard Form 294, Subcontracting Report for Individual Contracts, has been revised. Prime contractors under DoD and the U.S. Coast Guard contracts will no longer count subcontract awards to Historically Black Colleges and Universities and Minority Institutions towards their small disadvantaged business goal. Only NASA, pursuant to its unique statutory authority at 51 U.S.C. 30304, will continue to credit Historically Black Colleges and Universities and Minority Institutions subcontracting data as part of its small disadvantaged business goal.

• FAR 53.302–312, Optional Form 312, Small Disadvantaged Business (SDB) Participation Report, has been removed.

B. Analysis of Public Comments

1. General Support for the Proposed Rule

a. Fully Supports the Rule

Comment: One respondent expressed support for the rule, noting that the proposed amendments reflect policy changes Federal agencies have already put into effect pursuant to the Court's decision in Rothe. The respondent also pointed out that the proposed rule does not affect the Government-wide five percent SDB goal for prime contracts and subcontracts mandated by section 15(g) of the Small Business Act.

Response: The Councils acknowledge receipt of this comment.

b. Support for All SDBs

Comment: One respondent specifically acknowledged the impact the Federal Government has in promoting SDBs. Though it is understood that removing the SDB price adjustment has little practical effect on SDBs, the respondent urged the Government to support all SDBs as they grow their businesses. Further, the respondent reminded the Councils of the unique relationship between the United States and its indigenous people and asked that the trust responsibility for Native Americans and the government-to-government relationship continue to be honored.

Response: The Councils acknowledge receipt of this comment.

2. Removal of Barriers to SDB Participation in Federal Procurement

Comment: While recognizing that the Court's decision in Rothe may necessitate some changes to the FAR, many respondents stated that minority contracting programs that assist SDBs and women-owned businesses are entirely constitutional and should be maintained. They stated that minority contracting programs serve to remedy historical patterns of discrimination in Federal procurement and are narrowly tailored to serve this purpose. The respondents noted that despite concerted efforts to address procurement disparities for SDBs, minority, and women-owned businesses by the Federal Government, discrimination persists in Federal procurement and, therefore, they asked the Councils to take into consideration the compelling interest of contracting preferences.

Response: This rule is limited only to contracting programs that were authorized solely by 10 U.S.C. 2323. Programs created to assist businesses owned by socially and economically disadvantaged individuals that were not based solely on this legal authority are unaffected by this rule. For instance, section 8(a) of the Small Business Act (Pub. L. 85–536, as amended, (15 U.S.C. 637(a)), otherwise known as the ''8(a) Program'' is a tool used to assist socially and economically disadvantaged businesses to develop their company's ability to compete for Federal contracting opportunities. The 8(a) Program is, and continues to be, successful in assisting small businesses as well as a means for Federal agencies to achieve the statutory goal for prime contract awards to SDBs.

3. Concerns Related to Rule

a. Ability To Achieve the Five Percent Goal

Comment: Several respondents, who thought that the rule removes the five percent statutory goal for contracting with SDBs, expressed concern that the rule will likely end programs that are beneficial to disadvantaged businesses, and potentially place all small business programs in jeopardy by removing agency accountability.

Response: The final rule does not, in any way, alter the Governmentwide goal of participation by SDBs of not less than five percent of the total value of all prime contract and subcontract awards each fiscal year. In addition, the policies, practices, and programs that agencies have been relying on since the Court of Appeals decision in Rothe and the expiration of the statute to achieve SDB participation, including contracting officers' authority to continue making set-aside awards to SDBs who are participants in SBA's 8(a) business development program, remain in full effect. Agencies have successfully used these authorities to provide meaningful opportunities for SDBs.

b. Retention of Price Evaluation Adjustment Authority

Comment: A number of respondents expressed concern regarding the removal of FAR subpart 19.11, which gave DoD, the United States Coast Guard (USCG), and NASA the authority to apply the Price Evaluation Adjustment (PEA). The respondents stated that doing so will deny SDBs the maximum, practicable opportunity to be considered for Federal contract awards. Further, the respondents pointed out that because the PEA had not been used in a decade was no justification to delete it.

Response: Section 801 of the National Defense Authorization Act for FY 1999, (Pub. L. 105–261) amended 10 U.S.C. 2323 by mandating that the Secretary of Defense suspend the PEA if DoD achieved the five percent SDB goal in the previous fiscal year. DoD has met or exceeded the five percent SDB goal since FY 2001; therefore, in accordance with the mandate, DoD suspended the use of the PEA.

In addition, the Court's decision in Rothe, coupled with the subsequent expiration of 10 U.S.C. 2323 on September 30, 2009, requires the permanent removal of the statutory basis for the PEA for DoD, USCG, and NASA.

c. Retention of SDB Subcontracting Incentive

Comment: Some respondents expressed concern regarding the removal of the incentive subcontracting program for SDB concerns. One respondent remarked that the preamble of the **Federal Register** notice indicates that FAR 19.1203, ''Incentive subcontracting with small disadvantaged business concerns'' has been retained but moved to FAR subpart 19.7; however, the list of proposed amendments indicates that FAR subpart 19.12 has been deleted with no corresponding amendments to FAR subpart 19.7. Since Rothe did not nullify the basis for FAR subpart 19.12, FAR subpart 19.12 should not be removed unless, and until, an amendment to FAR subpart 19.7 implementing the suggested realignment has been executed.

Response: The authority to use monetary incentives to increase subcontracting opportunities for SDBs

remains in the FAR; however, it was relocated to FAR subpart 19.7. The clause at 52.219–10 has also been amended accordingly. By doing so, the SDB incentive provisions are now aligned with other subcontracting incentives authorized under section 8(d)(4)(E) of the Small Business Act, as amended, (15 U.S.C. 637(d)(4)(E)).

d. Removal of SDB Evaluation Factors and Subfactors

Comment: Some respondents expressed concern regarding the removal of FAR 19.1202, which established a requirement for contracting officers to use an evaluation factor or subfactor to assess the participation of SDB concerns during contract performance when formulating the contract award decision. The respondents stated that the proposed FAR changes would have a negative impact on SDBs seeking prime contract awards, foster an environment that discourages business relationships between large prime contractors and SDBs, and further weaken SDBs' ability to compete for Federal contracts.

Response: It is necessary to remove FAR subpart 19.12 to accommodate the Court's decision in Rothe and the fact that the underlying statutory authority for the specific procurement mechanisms in FAR subpart 19.12 has expired. However, there is nothing in this rulemaking that precludes an agency from using evaluation factors and subfactors during source selection to ascertain the commitment of the offeror to the small business community, to include SDBs.

4. Focus of the Rule

a. Other Socioeconomic Programs

Comment: A few respondents noted that the proposed revisions to the FAR were written to address only section 1207. Some of these respondents argued that the issues addressed in Rothe also make the SBA 8(a) and 8(d) programs indefensible. In addition, they argued that Rothe challenges the constitutionality of setting aside contracts under the AbilityOne and Randolph Sheppard programs and to concerns owned by Alaska Native Corporations. These respondents concluded that the FAR rule needs to address these issues.

Response: The Court's decision in Rothe was specifically limited to the constitutionality of section 1207 of the National Defense Authorization Act for FY 1987. The Court's decision did not address the merits of other statutorily-mandated programs. Sections 8(a) and 8(d) of the Small Business Act, as well as the AbilityOne and Randolph Sheppard programs, are not within the purview of 10 U.S.C. 2323 and, therefore, are not the subject matter of this rule.

b. Disparity Studies

Comment: One respondent suggested that the Administration should address historical and present discrimination in Federal contracting practices by conducting the disparate impact studies referenced in the court decision Adarand Constructors, Inc. v. Pena, Secretary of Transportation, et al. The respondent recommended that any remedies the Administration implements should be based on the result of those studies.

Response: The comment is addressed to constitutionality standards; however, the scope of this rule is limited to harmonizing the FAR with current statutory authority.

5. Impact of the Rule on Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs)

Comment: A few respondents expressed concern regarding the impact of a Defense Federal Acquisition Regulations Supplement (DFARS) deviation regarding HBCUs and MIs. The respondents stated the changes will eliminate small disadvantaged business credits for prime contractors who subcontract with HBCUs and MIs. This in turn could reduce the incentives for prime contractors to award subcontracts to HBCUs and MIs. The respondents cautioned that DoD must ensure that the proposed rule does not inadvertently impede its current efforts to implement 10 U.S.C. 2362 objectives (*e.g.,* engage prime contractors and small businesses in partnership with HBCUs and MIs as a way of increasing the schools' research, development, test, and engineering involvement).

Response: This rule implements changes needed to conform the FAR to the Court's decision in Rothe and the expiration of 10 U.S.C. 2323. The issues raised by these respondents involve statutes that are external to the Rothe decision and address DFARS regulations rather than the FAR and, therefore, are outside the scope of this rule.

6. Technical Clarifications

Comment: One respondent noticed a number of technical errors in the rule: (1) The respondent questioned the requirement at FAR 12.303(b)(1), which requires the contracting officer to use a continuation sheet to provide the incentive subcontracting percentage in Block 10 of the Standard Form (SF) 1449, ''Solicitation/Contract/Order For Commercial Items.'' The respondent stated this requirement was unnecessary since the contracting officer is already required to provide the same information when using FAR 52.219–10; (2) The respondent noticed that paragraph (a)(8) was inadvertently omitted when the paragraphs in the Scope section of part 19 were renumbered; and (3) The respondent commented that the clarification at 19.1307(d) and 52.219–4(b)(3) was unnecessary and potentially confusing. The respondent recommended either deleting the paragraphs entirely, or including a clearer explanation of the mechanics of the historically underutilized business zone (HUBZone) price evaluation preference.

Response: (1) The guidance at FAR 12.303(b)(1) must remain. FAR 52.219–10 can be incorporated into solicitations and contracts by reference, in which case the contracting officer must use the SF 1449 in order to provide the subcontracting incentive percentage.

(2) FAR 19.000 Scope, paragraph (a)(8) has not been removed but instead modified to remove the reference to the PEA for small disadvantaged businesses.

(3) FAR 19.1307(d) and FAR 52.219–4(b)(3) have been deleted. FAR 19.1307(d) and the clause at 52.219–4(b)(3) were originally used to clarify that an offeror could receive both the HUBZone price evaluation preference and the SDB PEA, if eligible, under the same solicitation. However, the removal of the SDB PEA renders this guidance unnecessary.

(4) FAR 53.302–312, Optional Form 312, Small Disadvantaged Business (SDB) Participation Report, has been removed.

(5) Standard Form 294, Subcontracting Report for Individual Contracts, has been revised to remove the HBCU/MI subcontracting data collection requirement for DoD and USCG since the collection of this data resided in 10 U.S.C. 2323. However, under a separate law, 51 U.S.C. 30304, NASA is still required to collect HBCU/MI subcontracting data. The revised form reflects this distinction.

III. 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 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. 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, *et seq.* The FRFA is summarized as follows:

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 55849 on September 9, 2011, to remove certain procurement mechanisms authorized by section 1207 of the National Defense Authorization Act for Fiscal Year (FY) 1987, Pub. L. 99–661, (10 U.S.C. 2323) from the Federal Acquisition Regulation (FAR). The basis for this action is the U.S. Court of Appeals for the Federal Circuit's ruling on November 4, 2008, which found the current 10 U.S.C. 2323 to be unconstitutional. On February 27, 2009, the United States District Court, Western District of Texas, San Antonio (the Court), pursuant to instructions from the U.S. Court of Appeals for the Federal Circuit, declared the current 10 U.S.C. 2323 unconstitutional and enjoined its further application in DoD, U.S. Coast Guard, and NASA procurements.

As a result of the District Court's injunction of 10 U.S.C. 2323, and the subsequent expiration of the law on September 30, 2009, there no longer is a statutory basis for a unique DoD, USCG, and NASA Small Disadvantaged Business Participation Program.

The final rule amends the FAR to remove language based on the expired statutory authority at 10 U.S.C. 2323.

This rule will apply to SDBs seeking to obtain prime contracts with the Federal Government and subcontracts with the Federal prime contractors. There are approximately 24,490 SDBs currently listed in the Central Contractor Registration that could potentially be affected.

Although there were no significant issues raised by the public regarding the Initial Regulatory Flexibility Analysis, several respondents commented that the removal of FAR subparts 19.11 and 19.12 would deny small disadvantaged businesses the maximum, practicable opportunity to be considered for Federal contract awards. The final rule reiterates that contracting programs authorized by 10 U.S.C. 2323 were found unconstitutional, and the statute expired September 30, 2009. Therefore, the FAR must be amended to reflect the current statutory environment. These amendments are expected to have negligible effect on SDBs as the price evaluation adjustment at issue has not been used for approximately a decade.

The rule imposes no new reporting or recordkeeping requirements for any small business or small entity. Pursuant with this final rule, Federal agencies will no longer be authorized to apply certain procurement mechanisms (FAR subparts 19.11 and 19.12) that had offered a benefit for SDB prime awards.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final 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. chapter 35). The rule removes FAR coverage at FAR subparts 19.11 and 19.12, and the corresponding clauses at FAR 52.219–22, Small Disadvantaged Business Status, FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, FAR 52.219–24, Small Disadvantaged Business Participation Program-Targets, FAR 52.219–25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, and FAR 52.219–26, Small Disadvantaged Business Participation Program-Incentive Subcontracting. This rule also removes the Optional Form 312, Small Disadvantaged Business (SDB) Participation Report. With these changes, the information collection associated with this rule under OMB Control number 9000–0150 will be removed, reducing the information collection burden imposed by the Federal Government on the public by 15,000 burden hours.

This rule will also change the information collection methodology for subcontracting. As a result, the information collection burden imposed by the Federal Government on the public by the Federal Government associated with OMB Control numbers 9000–0006 and 9000–0007 will be reduced by approximately 741,903 and 178,402 hours respectively.

No action is required to remove any hours related to the data collection requirement for the Year End Supplementary Report for Small Disadvantaged Businesses identified at FAR 52.219–9(l)(2)(iii) and Alternate III of the same clause, since these reporting requirements are not associated with any current OMB information collection clearances.

List of Subjects in 48 CFR Parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 36, 52, and 53

Government procurement.

Dated: September 30, 2014.

William Clark,

Acting 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 1, 2, 4, 12, 14, 15, 19, 22, 26, 36, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 36, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by removing FAR segments ''19.12'', ''52.219–22'', ''52.219–23'', and ''52.219–25'' and their corresponding OMB Control Number ''9000–0150''.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b)(2), in the definition ''Historically black college or university'' by removing the last sentence; and revising the definition ''Small disadvantaged business concern'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.1202 [Amended]

■ 4. Amend section 4.1202 by removing and reserving paragraph (k).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

■ 5. Amend section 12.301 by removing the last sentence from paragraph (b)(2).

■ 6. Amend section 12.303 by revising paragraph (b)(1) to read as follows:

12.303 Contract format.

* * * * *

(b) * * *

(1) Block 10 if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage);

* * * * *

PART 14—SEALED BIDDING

14.502 [Amended]

■ 7. Amend section 14.502 by removing paragraph (b)(4); redesignating paragraphs (b)(5) through (8) as paragraphs (b)(4) through (7), respectively; and removing from the newly designated paragraph (b)(5) ''Subpart'' and adding ''subpart'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.304 [Amended]

■ 8. Amend section 15.304 by removing paragraph (c)(4); and redesignating paragraphs (c)(5) and (6) as paragraphs (c)(4) and (5), respectively.

■ 9. Amend section 15.305 by revising paragraph (a)(2)(v) and removing from paragraph (a)(5) ''(c)(5)'' and adding ''(c)(4)'' in its place.

The revision reads as follows:

15.305 Proposal evaluation.

(a) * * *

(2) * * *

(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see subpart 19.7).

* * * * *

■ 10. Amend section 15.503 by—

■ a. Revising the introductory text of paragraph (a)(2)(i);

■ b. Removing paragraph (a)(2)(i)(B); and

■ c. Redesignating paragraphs (a)(2)(i)(C) through (E) as paragraphs (a)(2)(i)(B) through (D), respectively.

The revision reads as follows:

15.503 Notifications to unsuccessful offerors.

(a) * * *

(2) * * *

(i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award and upon completion of negotiations and determinations of responsibility—

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 11. Amend section 19.000 by—

■ a. Revising paragraphs (a) introductory text and (a)(8);

■ b. Removing paragraphs (a)(9) and (10); and

■ c. Redesignating paragraphs (a)(11) and (12) as paragraphs (a)(9) and (10), respectively.

The revisions read as follows:

19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act (15 U.S.C. 631, *et seq.*), applicable sections of the Armed Services Procurement Act (10 U.S.C. 2302, *et seq.*), 41 U.S.C. 3104, and Executive Order 12138, May 18, 1979. It covers—

* * * * *

(8) The use of a price evaluation preference for HUBZone small business concerns;

* * * * *

19.201 [Amended]

■ 12. Amend section 19.201 by—

■ a. Removing paragraph (b);

■ b. Redesignating paragraphs (c) through (f) as paragraphs (b) through (e), respectively;

■ c. Removing from the newly designated paragraph (c)(12) ''(d)(11)'' and adding ''(c)(11)'' in its place; and

■ d. Removing newly designated paragraph (e).

19.202–6 [Amended]

■ 13. Amend section 19.202–6 by removing paragraph (a)(3) and redesignating paragraphs (a)(4) through (6) as paragraphs (a)(3) through (5), respectively.

■ 14. Revise section 19.304 to read as follows:

19.304 Small disadvantaged business status.

(a) The contracting officer may accept an offeror's representation that it is a small disadvantaged business concern (SDB) concern.

(b) The provision at 52.219–1, Small Business Program Representations, or 52.212–3(c)(4), Offeror Representations and Certifications—Commercial Items, is used to collect SDB data.

(c) A representation of SDB status on a Federal prime contract will be deemed a misrepresentation of SDB status if the firm does not meet the requirements of 13 CFR 124.1001(b).

(d) Any person or entity that misrepresents a firm's status as an SDB concern in order to obtain a contracting opportunity in accordance with section 8(d) of the Small Business Act, (15 U.S.C. 637(d)) will be subject to the penalties imposed by section 16(d) of the Small Business Act, (15 U.S.C. 645(d)), as well as any other penalty authorized by law.

■ 15. Revise section 19.305 to read as follows:

19.305 Reviews and protests of SDB status.

This section applies to reviews and protests of a small business concern's SDB status as a prime contractor or subcontractor.

(a) SBA may initiate the review of SDB status on any firm that has represented itself to be an SDB on a prime contract or subcontract to a Federal prime contract whenever it receives credible information calling into question the SDB status of the firm.

(b) Requests for an SBA review of SDB status may be forwarded to the Small Business Administration, Assistant Administrator for SDBCE, 409 Third Street SW., Washington, DC 20416.

(c) An SBA review of a subcontractor's SDB status differs from a formal protest. Protests of a small business concern's SDB status as a subcontractor are processed under 19.703(a)(2). Protests of a concern's size as a prime contractor are processed under 19.302. Protests of a concern's size as a subcontractor are processed under 19.703(b).

19.309 [Amended]

■ 16. Amend section 19.309 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

■ 17. Amend section 19.703 by revising the first sentence of paragraph (a)(2) to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2) In connection with a subcontract, the contracting officer or the SBA may protest the disadvantaged status of a proposed subcontractor. * * *

* * * * *

19.705–1 [Amended]

■ 18. Amend section 19.705–1 by removing the second sentence.

■ 19. Amend section 19.705–4 by revising the last sentence of paragraph (c) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(c) * * * An incentive subcontracting clause (see 52.219–10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business concerns.

* * * * *

19.708 [Amended]

■ 20. Amend section 19.708 in paragraphs (c)(1), (2), and (3) by removing ''business, HUBZone small business, and'' and adding ''business, HUBZone small business, small disadvantaged business, and'' in its place.

Subpart 19.11 [Removed and Reserved]

■ 21. Remove and reserve subpart 19.11, consisting of sections 19.1101 through 19.1104.

Subpart 19.12 [Removed and Reserved]

■ 22. Remove and reserve subpart 19.12, consisting of sections 19.1201 through 19.1204.

19.1307 [Amended]

■ 23. Amend section 19.1307 by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1006 [Amended]

■ 24. Amend section 22.1006 by—

■ a. Removing from paragraph (a)(2)(i)(C) ''52.204–8(c)(2)(iii) or (iv)'' and adding ''52.204–8(c)(2)(ii) or (iii)'' in its place;

■ b. Removing from paragraph (e)(2)(i) ''52.204–8(c)(2)(iii)'' and adding ''52.204–8(c)(2)(ii)'' in its place; and

■ c. Removing from paragaraph (e)(4)(i) ''52.204–8(c)(2)(iv)'' and adding ''52.204–8(c)(2)(iii)'' in its place.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.304 [Amended]

■ 25. Amend section 26.304 by removing the last sentence.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.501 [Amended]

■ 26. Amend section 36.501 by removing from paragraph (b) ''19.11,''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 27. Amend section 52.204–5 by revising the date of the provision and by removing from paragraph (b) ''*(b)(1) of FAR 52.219–1,*'' and adding ''*(c)(1) of FAR 52.219–1,*'' in its place.

The revision reads as follows:

52.204–5 Women-Owned Business (Other Than Small Business).

* * * * *

Women-Owned Business (Other Than Small Business) (Oct 2014)

* * * * *

■ 28. Amend section 52.204–8 by—

■ a. Revising the date of the provision;

■ b. Revising paragraph (c)(1)(xxi);

■ c. Removing paragraph (c)(2)(i); and

■ d. Redesignating paragraphs (c)(2)(ii) through (vii) as (c)(2)(i) through (vi), respectively.

The revisions read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (Oct 2014)

* * * * *

(c) * * *

(1) * * *

(xxi) 52.226–2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

* * * * *

■ 29. Amend section 52.212–2 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (a) ''*(iv) small disadvantaged business participation;*''

The revision reads as follows:

52.212–2 Evaluation—Commercial Items.

* * * * *

Evaluation—Commercial Items (Oct 2014)

■ 30. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Adding in paragraph (a), in alphabetical order, the definition ''Small disadvantaged business concern'';

■ c. Removing from paragraph (c)(4) '', for general statistical purposes,'';

■ d. Removing paragraph (c)(10);

■ e. Redesignating paragraph (c)(11) as paragraph (c)(10);

■ f. Removing from the newly designated paragraph (c)(10)(ii) ''representation in paragraph (c)(11)(i)'' and adding ''representation in paragraph (c)(10)(i)'' in its place;

■ g. Revising Alternate I; and

■ h. Removing Alternate II.

The revisions and additions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial ITEMS (Oct 2014)

* * * * *

(a) * * *

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

* * * * *

Alternate I (OCT 2014)__. As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.)

__Black American.

__Hispanic American.

__Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

__Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands,

Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

__Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

__Individual/concern, other than one of the preceding.

■ 31. Amend 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Revising paragraphs (b)(11), (b)(12), (b)(16), (b)(17)(i), and (b)(17)(iv);

■ c. Removing paragraphs (b)(21) through (23);

■ d. Redesignating paragraphs (b)(24) through (56) as paragraphs (b)(21) through (53), respectively;

■ e. Revising paragraph (e)(1)(ii); and

■ f. Revising the date and paragraph (e)(1)(ii)(C) of Alternate II.

The revisions read 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 (Oct 2014)

* * * * *

(b) * * *

__(11)(i) 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) (15 U.S.C. 657a).

__(ii) Alternate I (NOV 2011) of 52.219–3.

__(12)(i) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

__(ii) Alternate I (JAN 2011) of 52.219–4.

* * * * *

__(16) 52.219–8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)).

__(17)(i) 52.219–9, Small Business Subcontracting Plan (OCT 2014) (15 U.S.C. 637(d)(4)).

* * * * *

__(iv) Alternate III (OCT 2014) of 52.219–9.

* * * * *

(e)(1) * * *

(ii) 52.219–8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

* * * * *

Alternate II (OCT 2014) * * *

(e)(1)(ii) * * *

(C) 52.219–8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

* * * * *

■ 32. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(viii) 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) (Oct 2014)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Items (OCT 2014)__

* * * * *

■ 33. Amend section 52.219–1 by revising the date of the provision and paragraphs (a) through (c) to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Oct 2014)

(a) *Definitions.* As used in this provision—

Economically disadvantaged women-owned small business (EDWOSB) concern means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) *Service-disabled veteran* means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (b) of this provision.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States, and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b)(1) The North American Industry Classification System (NAICS) code for this acquisition is—_____[*insert NAICS code*].

(2) The small business size standard is _____[*insert size standard*].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(c) *Representations.* (1) The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The

offeror represents that it □ is, □ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents as part of its offer that it □ is, □ is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [*Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(3) of this provision.*] The offeror represents as part of its offer that—

(i) It □ is, □ is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It □ is, □ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [*The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture:* _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [*Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (c)(4) of this provision.*] The offeror represents as part of its offer that—

(i) It □ is, □ is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It □ is, □ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [*The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture:* _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents as part of its offer that it □ is, □ is not a veteran-owned small business concern.

(7) [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.*] The offeror represents as part of its offer that it □ is, □ is not a service-disabled veteran-owned small business concern.

(8) [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents, as part of its offer, that—

(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 (c)(8)(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.

* * * * *

■ 34. Amend section 52.219–2 by revising the introductory text to read as follows:

52.219–2 Equal Low Bids.

As prescribed in 19.309(b), insert the following provision:

* * * * *

■ 35. Amend section 52.219–4 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (b)(3); and

■ c. Redesignating paragraph (b)(4) as (b)(3).

The revision reads as follows:

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

* * * * *

Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014)

* * * * *

■ 36. Amend section 52.219–8 by revising the date of the clause and paragraphs (a) through (c) to read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (Oct 2014)

(a) *Definitions.* As used in this contract—

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major

systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

* * * * *

■ 37. Amend section 52.219–9 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (d)(10)(iii) ''Historically'' and adding ''for NASA only, Historically'' in its place; and

■ c. Removing paragraph (l)(2)(iii); and

■ d. Amend Alternate III by—

■ 1. Revising the date of the Alternate III;

■ 2. Removing from paragraph (d)(10)(iii) ''Historically'' and adding ''for NASA only, Historically'' in its place; and

■ 3. Removing paragraph (l)(2)(iii).

The revisions read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (Oct 2014)

* * * * *

Alternate III (Oct 2014). * * *

* * * * *

■ 38. Amend section 52.219–10 by revising the date of the clause and removing from paragraph (b) ''and women-owned'' and adding ''small disadvantaged business, and women-owned'' in its place.

The revision reads as follows:

52.219–10 Incentive Subcontracting Program.

* * * * *

Incentive Subcontracting Program (Oct 2014)

* * * * *

52.219–22, 52.219–23, 52.219–24, 52.219–25, and 52.219–26 [Removed and Reserved]

■ 39. Remove and reserve sections 52.219–22, 52.219–23, 52.219–24, 52.219–25, and 52.219–26.

■ 40. Amend section 52.219–28 by revising the introductory text to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

As prescribed in 19.309(c), insert the following clause:

* * * * *

■ 41. Amend section 52.226–2 by revising the date of the provision, and in paragraph (a) the definition ''Historically black college or university'' to read as follows:

52.226–2 Historically Black College or University and Minority Institution Representation.

* * * * *

Historically Black College or University and Minority Institution Representation (Oct 2014)

(a) * * *

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

* * * * *

■ 42. Amend section 52.244–6 by revising the date of the clause and paragraph (c)(1)(iii) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Oct 2014)

* * * * *

(c)(1) * * *

(iii) 52.219–8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

* * * * *

PART 53—FORMS

■ 43. Revise section 53.219 to read as follows:

53.219 Small business programs.

The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in part 19: SF 294, (*Rev.* OCT 2014) Subcontracting Report for Individual Contracts. SF 294 is authorized for local reproduction.

■ 44. Amend section 53.301–294 by revising the form to read as follows:

53.301–294 Subcontracting Report for Individual Contracts.

BILLING CODE 6820–EP–P

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB Control Number: 9000-0006
Expiration Date: 4/30/2016

Public reporting burden for this collection of information is estimated to average 55.34 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0006, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.

1. CORPORATION, COMPANY, OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:

☐ MAR 31 ☐ SEPT 30 YEAR

5. TYPE OF REPORT

☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY ☐ GSA ☐ NASA
☐ NAVY ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*
☐ AIR FORCE ☐ DEFENSE CONTRACT MANAGEMENT AGENCY

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*

☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER

☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT

a. AGENCY'S OR CONTRACTOR'S NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:

☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
13. HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
14. VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
15. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of 10c)* (SEE SPECIFIC INSTRUCTIONS)				
16. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(Dollar Amount)* (SEE SPECIFIC INSTRUCTIONS)				
17. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT HAVE NOT BEEN CERTIFIED BY THE SMALL BUSINESS ADMINISTRATION AS SMALL DISADVANTAGED BUSINESSES *(Dollar Amount)* (SEE SPECIFIC INSTRUCTIONS)				
18. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT ARE NOT SMALL BUSINESSES *(Dollar Amount)* (SEE SPECIFIC INSTRUCTIONS)				

Previous Edition is Not Usable

STANDARD FORM 294 (REV. 8/2014)
Prescribed by GSA-FAR (48 CFR 53.219(a))

19. REMARKS

20a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	20b. TELEPHONE NUMBER	
	AREA CODE	NUMBER

GENERAL INSTRUCTIONS

1. This report is not required for small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting plans. The Summary Subcontract Report (SSR) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that : (a) hold one or more contracts over $650,000 (over $1,500,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the National Aeronautics and Space Administration (NASA), this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually, during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance in the United States or its outlying areas should be included in this report with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless you have been designated to receive an SB and SDB credit from an Alaska Native Corporation (ANC) or Indian tribe.

8. FAR 19.703 sets forth the eligibility requirements for participating in the subcontracting program.

9. Actual achievements must be reported on the same basis as the goals set forth in the contract. For example, if goals in the plan do not include indirect and overhead items, the achievements shown on this report should not include them either.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-866-705-5711 or via the Internet at http://www.dnb.com. The contractor should be prepared to provide the following information: (i) Company legal business name. (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized. (iii) Company physical street address, city, state and ZIP Code. (iv) Company mailing address, city, state and ZIP Code (if separate from physical). (v) Company telephone number. (vi) Date the company was started. (vii) Number of employees at your location. (viii) Chief executive officer/key manager. (ix) Line of business (industry). (x) Company Headquarters name and address (reporting relationship within your entity).

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated on this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 16. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 18: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 19. The amounts entered in Blocks 10a through 16 should reflect the revised goals.) There are no goals for Blocks 17 and 18. Under "Actual Cumulative," enter actual subcontract achievements (dollars and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards. However, the dollar amounts reported under "Actual Cumulative" must be for the same period of time as the dollar amounts shown under "Current Goal." For a contract with options, the current goal should represent the aggregate goal since the inception of the contract. For example, if the contractor is submitting the report during Option 2 of a multiple year contract, the current goal would be the cumulative goal for the base period plus the goal for Option 1 and the goal for Option 2.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSB, VOSB, service-disabled VOSB, and HUBZone SBs. For NASA contracts only, include subcontracting awards to HBCUs and MIs. Include subcontracts awarded to ANCs and Indian tribes that are not small businesses and that are not certified by the SBA as SDBs where you have been designated to receive their SB and SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive SB and SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs) and any other-than-small businesses. Do not include subcontracts awarded to ANCs and Indian tribes that have been reported in 10a above.

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 - 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women or veterans).

BLOCK 11: Report all subcontracts awarded to SDBs (including WOSB, VOSB, service-disabled VOSBs, and HUBZone SB SDBs). Include subcontracts awarded to ANCs and Indian tribes that have not been certified by SBA as SDBs where you have been designated to receive their SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive their SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company. For NASA contracts only, include subcontracting awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSBs (including SDBs, VOSBs (including service-disabled VOSBs), and HUBZone SBs that are also WOSBs).

BLOCK 13: Report all subcontracts awarded to HUBZone SBs (including WOSBs, VOSBs (including service-disabled VOSBs), and SDBs that are also HUBZone SBs).

BLOCK 14: Report all subcontracts awarded to VOSBs including service-disabled VOSBs (and including SDBs, WOSBs, and HUBZone SBs that are also VOSBs).

BLOCK 15: Report all subcontracts awarded to service-disabled VOSBs (including SDBs, WOSBs, and HUBZone SBs that are also service-disabled VOSBs).

BLOCK 16: (For contracts with NASA): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 17: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 11, but have not been certified by SBA as SDBs.

BLOCK 18: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 10a, but are not small businesses.

BLOCK 19: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSB, service-disabled VOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the six goals were not met.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

53.302–312 [Removed]

■ 45. Remove section 53.302–312.

[FR Doc. 2014–24236 Filed 10–10–14; 8:45 am]

BILLING CODE 6820–EP–C