

- c. In paragraph (c), remove the word “consider” and add, in its place, the word “considers”;
- d. In paragraph (d), remove the word “incur” and add, in its place, the word “incurs”;
- e. In paragraphs (c) and (d), remove the word “we” wherever it appears and add, in its place, the word “FEMA”; and
- f. In paragraphs (a), (b), and (d), remove the word “us” wherever it appears and add, in its place, the word “FEMA”.

§ 204.63 [Amended]

- 13. In § 204.63—
- a. In paragraphs (a) and (b), remove the word “We” wherever it appears and add, in its place, the word “FEMA”;
- b. Add a new paragraph (c) to read as follows:

§ 204.63 Allowable costs.

* * * * *

(c) Management costs as defined in 44 CFR part 207 do not apply to this section.

§ 204.64 [Amended]

- 14. In § 204.64 paragraph (a), remove the words “(FEMA Form 20–10)”.

PART 206—FEDERAL DISASTER ASSISTANCE

- 15. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1.

Subpart L—[Removed and reserved]

- 16. Remove and reserve subpart L, consisting of §§ 206.390 through 206.395.

Dated: February 8, 2013.

W. Craig Fugate

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–05254 Filed 3–6–13; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 13, 14, 15, and 19

[FAR Case 2012–014; Docket 2012–0014; Sequence 1]

RIN 9000–AM46

Federal Acquisition Regulation; Small Business Protests and Appeals

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Small Business Administration’s (SBA) revision of the small business size and small business status protest and appeal procedures to ensure that contracts set-aside for small businesses are awarded to eligible small business concerns.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before May 6, 2013 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2012–014 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2012–014”. Select the link “Submit a Comment” that corresponds with “FAR Case 2012–014.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2012–014” on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2012–014, 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: Mr. Karlos Morgan, Procurement Analyst, at

202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–014.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to update the small business size and small business status protest and appeal procedures, protest and appeal timeframes, and to address the application of the Small Business Administration’s (SBA) decisions on a protested concern’s size and other small business status determinations. These changes are consistent with SBA’s final rule published in the **Federal Register** at 76 FR 5680, dated February 2, 2011, that amended SBA’s regulations to clarify the effect, across all small business programs, of initial and appeal eligibility decisions; SBA’s interim final rule, published in the **Federal Register** at 77 FR 1857, dated January 12, 2012, that amended its regulations pertaining to the Women-Owned Small Business Federal Contract Program so that its protest and appeal procedures would be consistent with all other small business programs; and SBA’s final rule published in the **Federal Register** at 76 FR 8222, dated February 11, 2011, that amended SBA’s regulations to address changes with regard to North American Industry Classification System (NAICS) code determinations and the nonmanufacturer rule.

In addition, this rule proposes to restructure sections of the FAR that address small business status protest and appeal procedures. This restructuring of the FAR text will provide uniformity to the protest and appeals guidance provided at FAR 19.306, Protesting a firm’s status as a HUBZone small business concern, FAR 19.307, Protesting a firm’s status as a service-disabled veteran-owned small business concern, and FAR 19.308, Protesting a firm’s status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program. This rule also updates the protest and appeals guidance found at FAR 19.302, Protesting a small business representation or rerepresentation.

The initial restructuring of the protest and appeals process was established under FAR case 2010–015, Women-Owned Small Business (WOSB) Program, published in the **Federal Register** at 76 FR 18304 on April 1, 2011. This rule proposes to restructure FAR 19.306 and 19.307 to be uniform

and consistent with the structure of the text provided in FAR 19.308, which was established under FAR case 2010–015 and with SBA regulations.

This rule does not address revisions to FAR 19.305, protesting a representation of disadvantaged business status. A separate proposed rule, requesting public comments on revisions to FAR 19.305, was published in the **Federal Register** at 76 FR 55849 on September 9, 2011.

II. Discussion and Analysis

The following is a summary of the proposed FAR amendments associated with this rule:

A. Small Business Size Protests

Proposed revisions include amending FAR 19.302 to:

- Increase the amount of time the SBA has, after receiving a protest, to make a size determination of a protested concern, from 10 to 15 business days and to advise that an award may be made to a protested concern after SBA has determined it to be an eligible small business or has dismissed the protest.
- Clarify that the contracting officer has the authority to extend the amount of time needed by SBA to make a size determination.
- Provide guidance on actions available to the contracting officer in the event a size or status determination is not received within the 15-day timeframe or within any extension granted by the contracting officer.
- Clarify that it is within the discretion of SBA's Office of Hearing and Appeals (OHA) to accept an appeal from a size determination, and, that SBA may, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA.
- Include the requirement that the contracting officer shall consider whether contract performance can be suspended until an OHA Judge renders a decision, when a post-award appeal is submitted to OHA within the required timeframe. In addition, if OHA finds a protested concern to be ineligible for award, the contracting officer may terminate the contract, and shall not exercise the next option or issue any further task or delivery orders.

B. Small Business Status Protest and Appeals

The proposed revisions include amending FAR 19.306, 19.307, and 19.308. Revisions to these sections of the FAR are necessary to provide consistent guidance on the application of protest and appeal decisions to

Federal acquisitions. The proposed revisions address:

- What information the protest must contain in order for it to be considered and the timeframes for submittal of a protest by an interested party;
- What actions the contracting officer must take before and after receipt of an eligibility decision;
- What actions the contracting officer must take if a protest has been denied or dismissed;
- What actions to take if a protest has been sustained and the concern was determined to be ineligible;
- What actions to take if a concern has or has not filed a timely appeal; and
- If a protest has been sustained and the concern was determined to be ineligible as an SDB, SDVOSB, HUBZone, or an EDWOSB or WOSB eligible under the WOSB Program, what must happen before the concern can represent itself under one of these small business categories.

C. Reorganizing Status Protest and Appeal Regulations

As part of this proposed rule, FAR 19.306 and 19.307 will be restructured to be consistent with the reconfiguration of FAR 19.308 that was accomplished under FAR Case 2010–015, Women-Owned Small Business (WOSB) Program. Realignment of FAR 19.306 and 19.307 in an arrangement similar to FAR 19.308 will enable speedier access to protest and appeal information.

D. Other Changes

1. Updating Ineligibility Status

The proposed revisions to FAR 4.604 require contracting officers to update the Federal Procurement Data System (FPDS) to reflect the final decision of the SBA regarding the small business size determination.

2. Revisions to Nonmanufacturer Rule

The proposed revisions to FAR 19.102(f) clarify the requirements for a small business concern to be considered a “nonmanufacturer.” The proposed revisions include adding in the FAR that a small business concern must be primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied; take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and will supply the end item of a small business manufacturer, processor, or producer made in the United States or its outlying areas, or is granted a waiver. This change reflects current SBA regulations.

3. Clarifying the Use of Wholesale and Retail North American Industry Classification System (NAICS) Codes

The proposed revisions to FAR 19.303 clarify that the contracting officer shall select the NAICS code that best describes the principal purpose of the product or service being acquired.

Other proposed revisions to FAR 19.303 include (1) Clarifying who may appeal a contracting officer's NAICS code designations or applicable size standard; (2) the adding of a new requirement for contracting officers to advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal; and (3) adding a notification that the SBA may file a NAICS code appeal at any time before offers are due.

4. System for Award Management (SAM)

The text of this proposed rule uses the new FAR reference, System for Award Management (SAM), for Central Contractor Registration (CCR) and Online Representations and Certifications Application (ORCA). There is a pending FAR rule (FAR Case 2012–023, System for Award Management Name Change, Phase 1 Implementation), which will make a global update to all of the existing references to CCR and ORCA throughout the FAR to the SAM designation.

III. Executive Order 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. The Office of Information and Regulatory Affairs (OIRA) has deemed that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993, and that this rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change 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.* The SBA's final rule that was published in the **Federal Register** at 76 FR 5680, on February 2,

2011, provided a Final Regulatory Flexibility Analysis covering the same subject matter as that presented in this proposed rule. For this reason, the rationale and methodology used by the SBA in support of its final rule was also used in the development of the Initial Regulatory Flexibility Analysis (IRFA) performed for this rule. The IRFA is summarized as follows:

The purpose of this proposed rule is to amend the FAR to provide revised regulatory coverage for size or status protest and appeal procedures, and to ensure that the FAR contains consistent and coherent protest and appeal procedures that are congruent with SBA regulations. The objective of these changes is to provide in the FAR, procedures to assure that contracts set-aside for small businesses are awarded to eligible small business concerns.

This rule will not have a direct negative impact on any small business concern, since it is aimed at preventing businesses that are not small or are ineligible in terms of their status as a HUBZone, SDVOSB, or WOSB concern, from receiving or performing contracts that have been set aside for small business concerns. This rule may indirectly benefit small business concerns by preventing awards to ineligible firms, or shortening the length of time ineligible firms perform set-aside contracts.

SBA processes nearly 500 size protests each fiscal year, resulting in 41 percent being determined to be small and 26 percent determined to be other than small. The rest are dismissed on procedural grounds. Thus, the number of concerns that could be affected by this rule, regardless of size, is approximately 335 per year, or approximately one tenth of one percent of the more than 341,000 small business concerns that are registered in the System for Award Management. (The number of protests in other small business programs is significantly less than the numbers of size protests received).

This rule will not impose any new information collection requirements on small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were considered because there is no other means to accomplish the stated objectives of this statute.

The Regulatory Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested

parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2012-014) in correspondence.

IV. Paperwork Reduction Act

The proposed 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).

List of Subjects in 48 CFR Parts 4, 13, 14, 15, and 19

Government procurement.

Dated: February 22, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 13, 14, 15, and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 13, 15, and 19 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 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.604 by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

4.604 Responsibilities.

* * * * *

(b) * * *

(4) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, the contracting officer must update the size status in FPDS.

(5) When the contracting office receives written notification of SBA's final decision on a protest concerning a size determination, the contracting officer shall update FPDS to reflect the final decision.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.102 [Amended]

■ 3. Amend section 13.102 by removing from paragraph (a)(3) “the Woman-owned” and adding “the Women-Owned” in its place.

PART 14—SEALED BIDDING

■ 4a. The authority citation for 48 CFR part 14 is revised to read as follows:

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

14.502 [Amended]

■ 4b. Amend section 14.502 by removing from paragraph (b)(7) “woman-owned small business concerns” and “Woman-Owned Small Business Program” and adding “women-owned small business concerns” and “Women-Owned Small Business Program” in their places, respectively.

PART 15—CONTRACTING BY NEGOTIATION

■ 5. Amend section 15.503 by removing from paragraph (a)(2)(i)(E) “the Woman-Owned” and adding “the Women-Owned” in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 6. Amend section 19.001 by revising the definition “Nonmanufacturer rule” to read as follows:

19.001 Definitions.

* * * * *

Nonmanufacturer rule means that a contractor under a small business, service-disabled veteran-owned small business, economically disadvantaged women-owned small business or women-owned small business eligible under the women-owned small business program set-aside, or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406). For non-manufacturer rules pertaining to HUBZone contracts, see 19.1303(e).

■ 7. Amend section 19.102 by revising paragraph (f) to read as follows:

19.102 Size standards.

* * * * *

(f)(1) To qualify to provide manufactured products as a small business concern for acquisitions set aside for small business (subpart 19.5), the Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14), the Women-Owned Small Business (WOSB) Program (subpart 19.15), or awards under section 8(a) of the Small Business Act (subpart 19.8), a concern must be the manufacturer or producer of the end item being procured and the end item must be manufactured or produced in the United States, or the concern must satisfy the conditions of the nonmanufacturers rule.

(2) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it

did not manufacture (a “nonmanufacturer”), is a small business if it—

- (i) Has no more than 500 employees;
- (ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied;
- (iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and
- (iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States or its outlying areas; except as provided in paragraphs (f)(6) through (f)(9) of this section.

(3) The term “nonmanufacturer” includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own facilities performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired (see 13 CFR 121.406(b)(2) for further guidance). However, see 52.219–14 for the limitations on subcontracting that apply to small business set-asides and 8(a) competitive or 8(a) sole source awards, 52.219–3 for HUBZone set-asides and HUBZone sole source awards, 52.219–27 for SDVOSB set-asides and SDVOSB sole source awards, 52.219–29 for economically disadvantaged women-owned small business (EDWOSB) set-asides, and 52.219–30 for set-asides to women-owned small business concerns eligible under the WOSB Program.

(4) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business concerns in the United States that are small under the size standards for the NAICS codes of the components being assembled.

(5) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(6) In the case of acquisitions set aside for small businesses, SDVOSB concerns, EDWOSB concerns or WOSB concerns eligible under the WOSB Program, or

awards under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant an individual or class waiver so that a nonmanufacturer does not have to furnish the product of a small business. For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available on SBA’s Internet Homepage at <http://www.sba.gov/content/class-waivers>. Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products. For procedures in requesting a waiver see 13 CFR 121.1204.

(7) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if the contracting officer determines that no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(8) Requests for waivers shall be sent to the Associate Administrator for Government Contracting, United States Small Business Administration, Mail Code 6250, 409 Third Street SW., Washington, DC 20416.

(9) The SBA provides for an exception to the nonmanufacturer rule if—

- (i) The procurement of a manufactured end product processed under the procedures set forth in part 13—

- (A) Is set aside for small business; and
- (B) Is not anticipated to exceed \$25,000; and

- (ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

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

■ 8. Amend section 19.302 by—

- a. Revising paragraph (c)(1);
- b. Adding paragraph (c)(3);
- c. Removing from paragraph (d)(1) “the 5th” and adding “the fifth” in its place;
- d. Revising paragraphs (d)(1)(ii) and (d)(2);
- e. Adding paragraph (d)(4);
- f. Removing paragraph (f);
- g. Redesignating paragraphs (g) through (k) as paragraphs (f) through (j); and
- h. Revising the newly designated paragraphs (f), (g), and (h).

The revised and added text reads as follows:

19.302 Protesting a small business representation or rerepresentation.

* * * * *

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, or rerepresentation of a contractor, shall promptly forward the protest to the SBA Government Contracting Area Director located at the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(2) * * *

(3) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The protest and any accompanying materials.

(ii) A copy of the size self-certification.

(iii) Identification of the applicable size standard.

(iv) The solicitation number.

(v) The name, address, telephone number and fax number of the contracting officer.

(vi) The bid opening date, or notification provided to unsuccessful offerors.

(vii) The date the contracting officer received the protest.

(viii) A complete address and point of contact for the protested concern.

(d) * * *

(1) * * *

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, facsimile, email, express and overnight delivery service, or letter postmarked within the 5-day period.

(2) Except as provided in paragraph (d)(4) of this section, the contracting officer or SBA may file a protest before or after award.

(3) * * *

(4) A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer, will be dismissed as premature by SBA.

* * * * *

(f)(1) Within 15 business days or within any extension of time granted by the contracting officer, after receiving a protest, the challenged concern’s response, and other pertinent information, the SBA Area Office will

determine the size status of the challenged concern. The SBA Area Office will notify the contracting officer, the protester, and the challenged concern of its decision by certified mail, return receipt requested.

(2) Award may be made to a protested concern after the SBA Area Office has determined that either the protested concern is an eligible small business or has dismissed all protests against it.

(3) This determination is final unless it is appealed in accordance with paragraph (h) of this section, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid.

(4) If SBA's Office of Hearings and Appeals (OHA) subsequently overturns the Area Office's determination or dismissal, and contract award has not been made, the contracting officer may apply the OHA decision to the procurement in question.

(g)(1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until the SBA has made a size determination or 15 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) If SBA has not made a determination within 15 business days, or within any extension of time granted by the contracting officer, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government.

(3) Whenever an award is made before the receipt of SBA's size determination, the contracting officer shall notify SBA that the award has been made.

(4) SBA may, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA.

(5) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action. The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(h) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by an SBA Government Contracting Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street SW., Washington, DC 20416, within the time limits and in strict accordance with the procedures contained in subpart C of 13 CFR part 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If a post-award appeal is submitted to OHA within the time limits specified in subpart C of 13 CFR part 134, the contracting officer shall consider suspending contract performance until an SBA Judge decides the appeal. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. SBA will inform the contracting officer of its ruling on the appeal. SBA's decision, if received before award, will apply to the pending acquisition. If the contracting officer has made a written determination in accordance with (g)(1) or (2) of this section, the contract has been awarded, and the SBA rulings is received after award, and OHA finds the protested concern to be ineligible for award, the contracting officer shall terminate the contract unless termination is not in the best interests of the Government, in keeping with the circumstances described in the written determination. However, the contracting officer shall not exercise any options or award further task or delivery orders.

* * * * *

■ 9. Amend section 19.303 by revising paragraphs (a) and (c) to read as follows:

19.303 Determining North American Industry Classification System codes and size standards.

(a)(1) The contracting officer shall determine the appropriate North American Industry Classification System (NAICS) code and related small business size standard and include them in solicitations above the micro-purchase threshold.

(2) The contracting officer shall select the NAICS code which best describes the principal purpose of the product or service being acquired. Generally, the principal purpose of the procurement is

classified according to the product or service which account for the greatest percentage of contract value.

(3) A concern that submits an offer or quote for a contract where the NAICS code assigned to the contract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it meets the requirements of FAR 19.102(f).

* * * * *

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation or any amendment affecting the NAICS code or size standard.

(2) Appeals from a contracting officer's NAICS code designation or applicable size standard may be filed with SBA's Office of Hearings and Appeals by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the Director, Office of Business Development may appeal a NAICS code designation; or

(ii) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel.

(3) Contracting officers shall advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see 5.102(a)(2)). Such notices shall include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA may file a NAICS code appeal at any time before offers are due.

(5) SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely NAICS code appeal.

(6)(i) The appeal petition must be in writing and must be addressed to the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416.

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(7) The appellant must serve the appeal petition upon—

(i) The contracting officer who assigned the NAICS code to the acquisition;

(ii) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street SW., Washington, DC 20416, facsimile 202-205-6873, or email at OPLService@sba.gov.

(8) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR part 134), and must be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must withhold award and immediately send to OHA an electronic link to or a paper copy of both the original solicitation and all amendments relating to the NAICS code appeal. The contracting officer will inform OHA of any amendments, actions, or developments concerning the procurement in question.

(9) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

■ 10. Amend section 19.306 by revising paragraphs (b) through (j), and paragraphs (l) and (m) to read as follows:

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

* * * * *

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a qualified HUBZone small business concern (see 13 CFR 126.800).

(2) SBA's protest regulations are found in subpart H "Protests" at 13 CFR 126.800 through 126.805.

(c) Protests relating to small business size status are subject to the procedures

of 19.302. An interested party seeking to protest both the small business size and HUBZone status of an apparent successful offeror shall file two separate protests.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not a qualified HUBZone small business concern as described at 13 CFR 126.103 and 13 CFR 126.200;

(ii) The principal office is not located in a HUBZone; or

(iii) At least 35 percent of the employees do not reside in a HUBZone.

(2) Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b)).

(e) Protest by an interested party.

(1) An offeror shall submit its protest to the contracting officer—

(i) For sealed bids—

(A) By the close of business on the fifth business day after bid opening; or

(B) By the close of business on the fifth business day from the date of identification of the apparent successful offeror, if the price evaluation preference was not applied at the time of bid opening.

(ii) For negotiated acquisitions, by the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to the

SBA's Director, HUBZone Program, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202-205-7167, Attn: HUBZone Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number.

(ii) The name, address, telephone number and fax number of the contracting officer.

(iii) The type of HUBZone contract.

(iv) Whether the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the

protester's opportunity for award was affected by the preference.

(v) If a HUBZone set-aside, whether the protester submitted an offer.

(vi) Whether the protested concern was the apparent successful offeror.

(vii) Whether the procurement was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable. If a price evaluation preference was applied after the bid opening date, also provide the date of identification of the apparent successful offeror.

(ix) The date the contracting officer received the protest.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a HUBZone small business concern, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA's Director, HUBZone Program and a copy shall be included in the contract file.

(i) *After SBA decision.* 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 Administrator for Government Contracting and Administrator for Government Contracting and 8(a) Business Development (AA/GCBD).

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If AA/

G CBD subsequently overturns the decision of the Director, HUBZone Program, the contracting officer may apply the AA/GCBD decision to the procurement in question.

(2) If the contracting officer has withheld award and SBA has sustained the protest and determined that the concern is not a HUBZone small business, and no AA/GCBD appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(ii) The contracting officer shall update the Federal Procurement Data System to reflect the final SBA decision.

(iii) The concern's designation as a certified HUBZone small business concern will be removed by SBA from the Dynamic Small Business Database. The concern shall not submit an offer as a HUBZone small business concern, until SBA issues a decision that the ineligibility is resolved; and

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, SBA has sustained the protest and determined that the concern is not a HUBZone small business, and a timely AA/GCBD appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an AA/GCBD decision is rendered.

(5) If AA/GCBD affirms the decision of the Director of the HUBZone Program, finding the protested concern is ineligible, and contract award has occurred—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(ii) The contracting officer shall update the FPDS to reflect the AA/GCBD decision; and

(iii) The concern's designation as a certified HUBZone small business concern will be removed by SBA from the Dynamic Small Business Database. The concern shall not submit an offer as a HUBZone small business concern

until SBA issues a decision that the ineligibility is resolved or AA/GCBD finds the concern is eligible on appeal.

(6) A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for 90 calendar days from the date of the SBA final decision.

(j) *Appeals of HUBZone status determinations.* The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's AA/GCBD. The AA/GCBD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any untimely appeal.

* * * * *

(l)(1) The party appealing the decision must provide notice of the appeal to—

(i) The contracting officer;
(ii) Director, HUBZone Program, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202-205-7167; and
(iii) The protested HUBZone small business concern or the original protester, as appropriate.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the Director/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GCBD 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. The AA/GCBD's decision is the final decision.

■ 11. Revise section 19.307 to read as follows:

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

(a) *Definition. Interested party,* as used in this section, has the meaning given in 13 CFR 125.8(b).

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a service-disabled veteran-owned small business (SDVOSB) concern (see 13 CFR 125.24).

(2) SBA's protest regulations are found in subpart D "Protests" at 13 CFR 125.24 through 125.28.

(c) Protests relating to small business size status are subject to the procedures

of 19.302. An interested party seeking to protest both the small business size and service-disabled veteran-owned small business status of an apparent successful offeror shall file two separate protests.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the service disabled veteran-owned status or the ownership and control of a concern if—

(i) For status protests, the protester presents evidence supporting the contention that the owner(s) cannot provide documentation from the Department of Veterans Affairs, Department of Defense determinations, or the U.S. National Archives and Records Administration to show that they meet the definition of "service-disabled veteran" or "service disabled veteran with a permanent and severe disability" as set forth in 13 CFR 125.8; or

(ii) For ownership and control protests, the protester presents evidence that the concern is not 51 percent owned and controlled by one or more service-disabled veterans. In the case of veteran with a permanent and severe disability, the protester presents evidence that the concern is not controlled by the veteran, spouse, or permanent caregiver of such veteran.

(2) Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 125.25(b)).

(e) *Protest by an interested party.* (1) An offeror shall submit its protest to the contracting officer—

(i) To be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (for negotiated acquisitions).

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202-205-6390, Attn: Service-Disabled Veteran Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must

include the following information to allow SBA to determine timeliness and standing:

- (i) The solicitation number.
- (ii) The name, address, telephone number and facsimile number of the contracting officer.
- (iii) Whether the contract was sole-source or set-aside.
- (iv) Whether the protestor submitted an offer.
- (v) Whether the protested concern was the apparent successful offeror.
- (vi) When the protested concern submitted its offer.
- (vii) Whether the acquisition was conducted using sealed bid or negotiated procedures.
- (viii) The bid opening date, if applicable.
- (ix) The date the contracting officer received the protest.
- (x) The date the protestor received notification about the apparent successful offeror, if applicable.
- (xi) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a service-disabled veteran-owned small business concern, the contracting officer shall either—

- (i) Withhold award of the contract until SBA determines the status of the protested concern; or
- (ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time that is granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the government. This determination shall be provided to the SBA's Director, Office of Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* 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 Office of

Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not an SDVOSB, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, the contract has been awarded, and SBA's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as a SDVOSB concern, and shall not submit an offer as a SDVOSB concern, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section and awarded the contract to the protested firm, SBA has sustained the protest and determined that the concern is not a SDVOSB, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible—

(i) The contracting officer shall terminate the contract unless it is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect OHA's decision; and

(iii) The concern shall remove its designation in SAM as a SDVOSB concern, until SBA issues a decision

that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(6) A concern found to be ineligible may not submit future offer's as an SDVOSB concern until the concern demonstrates to SBA's satisfaction that it has overcome the reason for the protest and SBA issues a decision to this effect.

(j) *Appeals of SDVOSB status determinations.* The protested SDVOSB small business concern, the protester, or the contracting officer may file appeals of protest determinations to OHA. OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal. See Subpart E "Rules of Practice for Appeals From Service-Disabled Veteran Owned Small Business Concerns Protests" at 13 CFR 134.501 through 134.515 for SBA's appeals regulations.

(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 SDVOSB protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

- (1) The contracting officer;
- (2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile 202-205-6390;

(3) The protested SDVOSB concern or the original protester, as appropriate; and

(4) Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202-205-6873, or email at OPLService@sba.gov.

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested SDVOSB small business concern. The OHA decision is the final agency decision and is binding on the parties.

■ 12. Revise section 19.308 to read as follows:

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

(a) *Definition. Interested party,* as used in this section, has the meaning given in 13 CFR 127.102.

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA

may protest the apparent successful offeror's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.

(2) SBA's protest regulations are found in subpart F "Protests" at 13 CFR 127.600 through 127.605.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and WOSB or EDWOSB status of an apparent successful offeror shall file two separate protests.

(d) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens; or

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women, when it is in connection with an EDWOSB contract.

(2) SBA shall consider protests by a contracting officer when the apparent successful offeror has failed to provide all of the required documents, as set forth in FAR 19.1503(c).

(3) Assertions that a protested concern is not a EDWOSB or WOSB concern eligible under the WOSB Program, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 127.603(a)).

(e) Protest by an interested party offeror.

(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by the close of business by the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202-205-6390, Attn: Women-owned Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number.

(ii) The name, address, telephone number and facsimile number of the contracting officer.

(iii) Whether the protestor submitted an offer.

(iv) Whether the protested concern was the apparent successful offeror.

(v) When the protested concern submitted its offer.

(vi) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vii) The bid opening date, if applicable.

(viii) The date the contracting officer received the protest.

(ix) The date the protestor received notification about the apparent successful offeror, if applicable.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as an EDWOSB or WOSB concern eligible under the WOSB Program, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA's Director, Office of Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* 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 Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling is received after award, and no OHA appeal has been filed, then—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, contract award has occurred, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible, then—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the Federal Data Procurement System (FPDS) to reflect OHA's decision; and

(iii) The concern must remove its designation in SAM as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(j) *Appeals of EDWOSB or WOSB concerns eligible under the WOSB Program status determinations.* (1) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, the protester, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with OHA.

(2) OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal.

(3) See subpart G "Rules of Practice for Appeals From Women-Owned Small Business Concerns (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests" at 13 CFR 134.701 through 134.715 for SBA's appeals regulations.

(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 EDWOSB concern or WOSB concern eligible under the WOSB program protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202-205-6390;

(3) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, or the original protester, as appropriate; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202-205-6873, or email at OPLService@sba.gov.

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested EDWOSB concern or WOSB concern eligible under the

WOSB program. The OHA decision is the final agency decision and is binding on the parties.

19.402 [Amended]

■ 13. Amend section 19.402 by removing from paragraph (c)(1)(ii) "the Woman-Owned" and adding "the Women-Owned" in its place.

19.502-2 [Amended]

■ 14. Amend section 19.502-2 by removing from paragraph (c) "(see 19.102(f)(4) and (5))" and adding "(see 19.102(f)(6) and (7))" in its place.

19.508 [Amended]

■ 15. Amend section 19.508 by removing from paragraph (c) and paragraph (d) "(see 19.102(f)(4) and (5))" and adding "(see 19.102(f)(6) and (7))" in its place.

19.703 [Amended]

■ 16. Amend section 19.703 by removing from paragraph (a) introductory text and paragraph (a)(1) "woman-owned small business concern" and adding "women-owned small business concern" in its place; and removing from paragraph (b) "a woman-owned" and adding "a women-owned" in its place.

19.811-3 [Amended]

■ 12. Amend section 19.811-3 by removing from paragraph (d)(2) "(see 19.102(f)(4) and (5))" and adding "(see 19.102(f)(6) and (7))" in its place.

[FR Doc. 2013-04995 Filed 3-6-13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130104011-3011-01]

RIN 0648-BC87

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013-2014

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention

Implementation Act (WCPFC Implementation Act) to implement limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone and on the high seas, restrictions on the use of fish aggregating devices (FADs), and requirements for U.S. purse seine vessels to carry observers. This action is necessary for the United States to implement provisions of a conservation and management measure (CMM) adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) and to satisfy the international obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Comments must be submitted in writing by April 8, 2013.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA-NMFS-2013-0043, and the regulatory impact review (RIR) prepared for this proposed rule, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0043, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility