

women-owned small business (WOSB) concerns. This rule requires EDWOSBs and WOSBs participating in the Women-Owned Small Business Program (the Program) to apply for certification through SBA or a SBA-approved third-party certifier to be eligible for WOSB or EDWOSB set-aside or sole-source contracts. EDWOSB and WOSB concerns that are not certified will not be eligible for set-aside and sole-source contracts under the Program. WOSBs that do not participate in the Program may continue to represent their status, be awarded contracts outside the Program, and these contracts will continue to count toward an agency's goal for awards to WOSBs.

#### Item V—Technical Amendments

Administrative changes are made at FAR 4.1202, 19.102, and 19.309. The date change is to provide additional time to implement the policy addressing the assignment of North American Industry Classification System codes to orders placed under multiple award contracts, as covered by changes made by FAR case 2014–002, *Set-Asides Under Multiple Award Contracts*.

#### William F. Clark,

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Federal Acquisition Circular (FAC) 2022–08 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2022–08 is effective September 23, 2022 except for Items I through IV, which are effective October 28, 2022.

#### John M. Tenaglia,

*Principal Director, Defense Pricing and Contracting, Department of Defense.*

#### Jeffrey A. Koses,

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#### Karla Smith Jackson,

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[FR Doc. 2022–20339 Filed 9–22–22; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 9, 15, 19, and 52

[FAC 2022–08; FAR Case 2017–019; Item I; Docket No. FAR–2017–019, Sequence No. 1]

RIN 9000–AN59

#### Federal Acquisition Regulation: Policy on Joint Ventures

**AGENCY:** 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 implement statutory and regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in its final rule published in the **Federal Register** on July 25, 2016, and to clarify that 8(a) joint ventures are not certified into the 8(a) program. Additionally, the rule implements SBA's statutory and regulatory changes that eliminated SBA approval of joint venture agreements for competitive 8(a) awards.

**DATES:** Effective October 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at [Malissa.Jones@gsa.gov](mailto:Malissa.Jones@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2022–08, FAR Case 2017–019.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 85 FR 34561 on June 5, 2020, to revise the FAR to implement statutory and regulatory changes made by the SBA regarding joint ventures. These changes allow a joint venture comprised of a protégé and its mentor to qualify as a small business or under a socioeconomic program (e.g., 8(a)) for which the protégé qualifies. These changes also provide updated requirements for other joint ventures to qualify as small businesses or to qualify under a socioeconomic program.

Section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240) and

section 1641 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239; 15 U.S.C. 657r) authorized the SBA Administrator to establish mentor-protégé programs for small business concerns, service-disabled veteran owned small business (SDVOSB) concerns, women-owned small business concerns in the Women-Owned Small Business (WOSB) Program, and HUBZone small business concerns modeled after the mentor-protégé program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)). On July 25, 2016, SBA issued a final rule (81 FR 48558) that implemented the mentor-protégé programs at 13 CFR 125.9. SBA's final rule allows a joint venture comprised of a protégé and its mentor to seek any type of small business contract, including a contract under a socioeconomic program, for which the protégé qualifies.

Additionally, this rule implements SBA's final rule published on October 16, 2020, at 85 FR 66146, which implemented statutory and regulatory changes that eliminated SBA approval of joint venture agreements for competitive 8(a) awards.

For further details see Section IV of this preamble, and see Section II of the proposed rule.

Seven respondents submitted public comments in response to the proposed rule.

##### II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule; however, no changes were made as a result of the public comments received. A discussion of the comments received, and the changes made to the rule as a result of SBA's final rule (85 FR 66146) published October 16, 2020, are provided as follows:

##### A. Summary of Significant Changes From the Proposed Rule

This final rule makes changes to paragraph (a) at FAR 19.703, Eligibility requirements for participating in the program, to add HUBZone small business to paragraphs (2)(i) and (ii). The proposed language at FAR 19.805–2(d)(2) is revised to clarify that SBA does not approve joint ventures for competitive awards, and the proposed language regarding SBA approval of joint ventures at 19.805–2(d)(2) and (e) is removed. Conforming changes are made to 52.219–18. These changes are required to resolve conflicts between the changes in the proposed rule and SBA's

final rule at 85 FR 66146, published October 16, 2020. In SBA's final rule, SBA specified that it no longer approves joint venture agreements for competitive 8(a) awards. As a result, changes are made to the text in this final rule.

### B. Analysis of Public Comments

#### 1. Support for the Rule

*Comment:* Three respondents expressed support for the rule.

*Response:* The Councils acknowledge the respondents' support for the rule.

#### 2. Outside the Scope of This Rule

*Comment:* One respondent recommended adding the verbiage "need only be approved by the SBA prior to the contract award" to the pre-award timeline.

*Response:* This final rule amends the FAR to implement statutory and regulatory changes regarding joint ventures made by the SBA. Editing or revising the pre-award timeline is outside the scope of this rule.

*Comment:* One respondent stated that there is no cost effective mechanism under the General Services Administration Federal Supply Schedule (FSS) program (referenced by the respondent as the Multiple Award Schedule) to track "the requirement that certain small business or socioeconomic parties to a joint venture perform 40 percent of the work performed by the joint venture and that the work performed must be more than administrative functions."

*Response:* The purpose of this rule is to implement SBA's final rule issued on July 25, 2016, at 81 FR 48558, which established the requirement that certain small business parties to a joint venture perform 40 percent of all work done by the joint venture and that work performed is more than merely performing administrative functions. GSA uses Industrial Operations Analysts to ensure contractors are complying with terms and conditions of Multiple Award Schedule contracts.

#### 3. Negative Impacts of the Rule

*Comment:* Two respondents expressed concern regarding the potential negative impacts of the rule. One respondent believes that the new rule will undermine small businesses. Under the proposed rule, a large business affiliated under a joint venture with a small business can collectively utilize a combined past performance, making the small business a "front" for the large business. The respondent believes this rule should be retired and not entered into the FAR. Another respondent stated that the rule places

the joint venture in an unfair advantage over other small businesses when considering past performance as an evaluation factor for source selection. The respondent further stated that the joint venture should receive a neutral rating if it has no past performance.

*Response:* This rule is expected to have an overall positive impact on small businesses by creating new opportunities under the mentor-protégé program. All mentors and protégés are subject to the requirements and limitations of the mentor-protégé program and, in accordance with 13 CFR 121.103(h)(1)(ii), only mentor-protégé joint ventures are eligible for set-aside opportunities, including those where a large business is a mentor. This final rule requires the small business protégé or 8(a) participant to perform at least 40 percent of the work done by the joint venture in accordance with 13 CFR 125.8. This rule recognizes that joint ventures perform work through their members, not as independent entities. Furthermore, this rule requires contracting officers to consider the past performance of each party to the joint venture if the joint venture does not demonstrate past performance.

#### 4. Clarification Needed

##### a. Clarify SBA Requirements for Evaluating a Mentor-Protégé Joint Venture's Past Performance

*Comment:* One respondent requested that this case address solicitation language indicating that the managing member must provide relevant past performance information. The respondent believes requesting past performance from a joint venture managing partner does not allow protégés to gain experience using their mentor's past performance.

*Response:* This rule implements SBA's final rule, 81 FR 48558, which requires the contracting officer to consider the past performance of the protégé when a joint venture under the mentor-protégé program does not have past performance. This change is made in subpart 9.1, Responsible Prospective Contractors, and in subpart 15.3, Source Selection.

##### b. Clarify Definition of Small Business Concern/Size Status Determination

*Comment:* One respondent stated that the amended definition of small business concern does not directly specify whether the contracting officer or SBA is authorized to make the size status determination of a concern. The respondent provided the following suggested language to provide clarity, "Contractors shall self-certify size

status. Questions of a contractor's size status shall be determined by the Small Business Administration."

*Response:* FAR subpart 19.3, Determination of Small Business Size and Status for Small Business Programs, specifies that SBA makes a size status determination. Therefore, it is not necessary to modify the definition of small business concern.

##### c. Clarify Joint Venture Applicability Under the GSA Federal Supply Schedules

*Comment:* One respondent requested clarification of the applicability of joint ventures to the GSA FSS Program. The respondent believes that the limited duration of a joint venture creates a conflict for its use in the FSS program. According to the respondent, under the FSS program contracts may be awarded for up to 20 years, in 5-year increments, and joint ventures are set up to bid on a specific job and may last up to six years, including one extension.

*Response:* This rule implements SBA's final rule at 85 FR 66146, published on October 16, 2020, which provides further clarification regarding the requirements for joint venture formation and duration. SBA's regulations do not prohibit a small business joint venture from performing the full length of their FSS contract and do not include a maximum time limitation on a joint venture.

##### d. Clarify Supplementary Information in Background Section

*Comment:* One respondent suggested that the adjective "improper" be replaced with "unintended" in the sentence that appeared in the last paragraph of the Background section under the Supplementary Information in the **Federal Register** Notice for the proposed rule: "This rule proposes clarifications to prevent the improper elimination of 8(a) joint venture proposals in the future."

*Response:* As noted in the **Federal Register** notice for the proposed rule, the clarification that 8(a) joint venture agreements need only be approved by the SBA prior to contract award is necessary because the Government Accountability Office (GAO) sustained a protest (BGI-Fiore JV, LLC, B-409520, May 29, 2014) in which an agency rejected an 8(a) joint venture's proposal on the basis that the 8(a) joint venture had not been certified by the SBA prior to submission of proposals. As stated in GAO's decision, GAO affirmed the protestor's argument that the agency improperly rejected its proposal. The use of the adjective "improper" in the **Federal Register** notice for the proposed

rule is derived directly from the text of the GAO decision. Further, the adjective suggested by the respondent, “unintended”, does not have the same meaning as “improper” and is not an appropriate substitution in this context. Finally, the suggested revision has no effect on the text of the rule; therefore, the final rule is unchanged.

e. Clarify SBA Joint Venture Review Timeline

*Comment:* One respondent asked to clarify the amount of time the SBA Associate Administrator for Business Development has to review the joint venture agreement.

*Response:* The final rule makes changes to the proposed rule FAR text at 19.805–2 to remove the proposed paragraph (e), which referred to the SBA Associate Administrator for Business Development review of the joint venture agreement. SBA’s final rule at 85 FR 66146 published on October 16, 2020, specified that SBA no longer approves joint venture agreements for competitive 8(a) awards. As a result, changes are made to the text in this final rule.

*Comment:* One respondent was concerned about “certification of the joint venture as an 8(a)” participant and how to properly address this situation given the workload of the SBA Business Opportunity Specialist. The respondent stated that the two proposals his joint venture proposed required a certification letter, which they did not have due to the joint venture not being approved. The respondent provided that his SBA office and Business Opportunity Specialist will not review any joint ventures unless a contracting officer or agency is willing to make an award, which is well after the proposal process is completed. To address this situation, the respondent recommended that the SBA conduct preliminary reviews prior to the submission of a contract effort and possibly when the joint venture is formed (approve the joint venture agreement and/or certify the joint venture is small) then conduct a full review at contract award. The respondent believes this approach will reduce the risk to the members of the joint venture of having to go through the proposal process only to be disqualified by the SBA.

*Response:* The Councils acknowledge the respondents concern with certification of the joint venture as an 8(a) participant and the differing interpretations of FAR clause 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns. Some have interpreted this clause to mean that 8(a) joint ventures that submitted an offer for an 8(a) contract needed to be “certified”

by the SBA and the joint venture agreement needed to be approved by the SBA by “the time of submission of offer.” This interpretation of the FAR clause is incorrect. This final rule amends the FAR to clarify that 8(a) joint ventures are not certified into the 8(a) program, and that 8(a) joint venture agreements need only be approved by the SBA prior to the award of an 8(a) sole source contract to prevent the improper elimination of 8(a) joint venture proposals in the future.

f. Clarify Size Status for Mentor-Protégé Joint Ventures

*Comment:* One respondent asked to clarify if a joint venture between a prime contractor and protégé in a socioeconomic program is considered a small business concern within that socioeconomic program. The respondent also asked to clarify if a joint venture between a mentor and a protégé (other than small business mentor and small business protégé) is a “small business joint venture.”

*Response:* The SBA regulations at 13 CFR 121.103(h) and 125.8(a) and (b) specify the requirements for joint ventures to qualify as a small business concern. The final rule amends FAR 19.3, Determination of Small Business Status for Small Business Programs, to address how a joint venture may qualify for an award as a small business concern under the socioeconomic programs. A joint venture may qualify as a small business concern if each participant in the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved agreement under a SBA mentor protégé program. A joint venture may qualify under socioeconomic programs when the joint venture qualifies as a small business joint venture and one of the parties to the joint venture qualifies under one or more of the socioeconomic programs. Therefore, an offer submitted by the joint venture made up of a mentor and protégé will be considered small. The language in the final rule is consistent with SBA’s regulations.

g. Clarify 8(a) Certification Requirements for a Small Business Joint Venture Party

*Comment:* Two respondents requested clarification regarding section 8(a) certification requirements for small business joint ventures prior to proposal submission. Additionally, one respondent requested that the specific requirements be provided. The

respondent also stated that since SBA does not certify joint ventures into the 8(a) program, once a firm outgrows its small business status for the size standard for its primary NAICS code, it should no longer be eligible for contracting benefits from its mentor-protégé relationship.

*Response:* In accordance with 13 CFR 124.513(e)(1), for 8(a) sole-source awards, SBA approves the joint venture agreement prior to award. SBA’s final rule at 85 FR 66146 published on October 16, 2020, amended 13 CFR 124.513(e)(1) to specify that SBA will not approve joint ventures in connection with competitive 8(a) awards (but see 13 CFR 124.501(g) for SBA’s determination of participant eligibility). As a result, changes are made to the text in this final rule at FAR 19.805–2(d).

h. Clarify the Method Used To Determine the Percentage of Work Performed in the Rule

*Comment:* One respondent asked to clarify how the Councils determined the requirement that certain small business parties to the joint venture must perform 40% of non-administrative work performed by the joint venture.

*Response:* This case implements SBA’s final rule published on July 25, 2016 at 81 FR 48558. SBA’s final rule established the requirement that certain small business parties to the joint venture perform 40% of all work done by the joint venture, and that work performed is more than merely administrative work.

C. Other Changes

Changes have been made to FAR 19.1503(f)(2) to clarify at least one party to the joint venture is an EDWOSB for an EDWOSB joint venture, or at least one party to the joint venture is a WOSB for a WOSB joint venture. Additionally, conforming changes have been made to FAR clauses 52.219–3, Notice of HUBZone Set-aside or Sole-Source Award and 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, and paragraph numbers for FAR clauses 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns, and 52.219–30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, were revised due to baseline changes.

### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the provisions and clauses at FAR 52.212–3, 52.212–5, 52.213–4, 52.219–1, 52.219–3, 52.219–4, 52.219–8, 52.219–9, 52.219–14, 52.219–18, 52.219–27, 52.219–28, 52.219–29, 52.219–30, and 52.244–6. However, this rule does not change the application to solicitations and contracts at or below the SAT or for commercial products (including COTS items) or for commercial services. The provisions and clauses continue to apply to acquisitions for commercial products (including COTS items), to acquisitions for commercial services, and acquisitions at or below the SAT.

#### A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT. Application of section 1641 to SAT procurements will further the Administration's efforts to advance equity in procurement, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, and promote "maximum practicable opportunities" for small businesses, consistent with the longstanding policy expressed in FAR 19.201. Although acquisitions under the SAT are set aside for small businesses by law, some awards are made to other than small businesses because small businesses are not able to meet the performance requirements. Section 1641 advances the interests of small business concerns by allowing for more joint ventures that include a small business to qualify as a small business or under a socioeconomic program. This access allows such small businesses to perform

work under SAT set-asides as part of a joint venture that they cannot perform as stand-alone entities. Exclusion of a large segment of Federal contracting, such as acquisitions under the SAT, will limit the full implementation of these objectives.

#### B. Applicability to Contracts for the Acquisition of Commercial Products (Including Commercially Available Off-the-Shelf Items) and for Commercial Services

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products or commercial services, and is intended to limit the applicability of laws to those contracts. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts and subcontracts for commercial products or commercial services, the provision of law will apply to them.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

The FAR Council has made a determination to apply this statute to acquisitions for commercial products or commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items. Application of section 1641 to acquisitions of commercial products and commercial services, including COTS items, would further the Administration's efforts to advance equity in procurement, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, and promote "maximum practicable opportunities" for small businesses, consistent with the longstanding policy expressed in FAR 19.201. Section 1641 advances the interests of small business concerns by allowing for more joint ventures that include a small business to qualify as a small business or under a socioeconomic program. This access allows such small businesses to perform work under set-aside procurements of commercial products and services, including COTS items, as part of a joint venture that they cannot perform as stand-alone entities. Exclusion of a large

segment of Federal contracting, such as acquisitions of commercial products and commercial services, including COTS items, will limit the full implementation of these objectives.

### IV. Expected Impact of the Rule

This final rule will allow joint ventures to qualify as small if all parties to the joint venture qualify as small under the size standard associated with the NAICS code for the solicitation, or if the joint venture is comprised of a mentor and protégé in the SBA Mentor-Protégé Program. Additionally, this rule allows a joint venture to qualify for one of the socioeconomic programs if the joint venture qualifies as a small business joint venture and one of the parties to the joint venture meets the associated requirements of the socioeconomic program. The joint venture will identify its size and socioeconomic status in accordance with FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and 52.219–1, Small Business Program Representations.

This rule requires agencies to consider the past performance of each party to a joint venture if the joint venture is not able to demonstrate past performance for an offer for award. Currently, agencies are not required to review the past performance of each party to a joint venture; therefore, this rule is expected to help joint ventures to have qualifying past performance for award when a joint venture does not have qualifying past performance. This additional requirement is beneficial to joint ventures that are in the initial stages of their agreement and do not have past performance experience.

This rule revises the FAR to align 8(a) joint venture requirements with SBA's regulations, which is expected to decrease the number of protests. This rule clarifies that SBA does not approve joint ventures for competitive 8(a) awards. In addition, this rule revises the FAR to include SBA's requirement that small business parties to a joint venture must perform 40% of the work done by the joint venture and that the work performed must be more than merely administrative.

### V. 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 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.

## VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

## VII. 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. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240) and section 1641 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239; 15 U.S.C. 657r) regarding joint ventures as implemented by the Small Business Administration (SBA) in its final rule at 81 FR 48558, published on July 25, 2016. The rule also implements SBA’s final rule published on October 16, 2020, at 85 FR 66146. The statutory and regulatory changes establish the mentor-protégé program, clarify that 8(a) joint ventures are not certified into the 8(a) program, and specify that SBA no longer approves joint venture agreements for competitive 8(a) awards.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

The final rule 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. 601–612. This rule will impact small business joint ventures and small business entities in a SBA mentor-protégé program. Based on joint venture data in the System for Award Management, the estimated number of small business joint ventures is 3,347. Assuming that each joint venture includes 2 small businesses, the number of small entities impacted is 6,694. According to SBA’s final rule, there are an estimated 2,000 pairs of mentors and protégés that may be impacted. Therefore, the estimated number of total small entities to which the rule applies is 8,694.

This final rule does not include any recordkeeping or other compliance requirements for small businesses.

Joint ventures will be required to represent themselves as small businesses in accordance with the updated representation provisions at FAR 52.212–3 or 52.219–1. Representation is currently required for all small entities doing business with the Government; however, representation is not a new requirement. The number of options for the entities to select from has merely increased to include joint venture options. Therefore, the potential impact is de minimis.

The final rule may have a positive economic impact on small entities. The updated SBA regulations allow for more joint ventures that include a small business to qualify as a small business or under a socioeconomic program; and therefore, more small businesses can qualify for set-aside procurements.

There are no known significant alternative approaches to the final rule.

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

## VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies to the information collection requirements in the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0136 and 9000–0007.

### List of Subjects in 48 CFR Parts 2, 9, 15, 19, and 52

Government procurement.

#### William F. Clark,

*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 2, 9, 15, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 9, 15, 19, and 52 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 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b)(2), by revising paragraph (1) of the definition of “Small business concern” to read as follows:

### 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

Small business concern—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102).

\* \* \* \* \*

## PART 9—CONTRACTOR QUALIFICATIONS

■ 3. Amend section 9.104–3 by redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2) to read as follows:

### 9.104–3 Application of standards.

\* \* \* \* \*

(c)(1) \* \* \*

(2) *Joint ventures.* For a prospective contractor that is a joint venture, the contracting officer shall consider the past performance of the joint venture. If the joint venture does not demonstrate past performance for award, the contracting officer shall consider the past performance of each party to the joint venture.

\* \* \* \* \*

## PART 15—CONTRACTING BY NEGOTIATION

■ 4. Amend section 15.305 by adding paragraph (a)(2)(vi) to read as follows:

### 15.305 Proposal evaluation.

(a) \* \* \*

(2) \* \* \*

(vi) For offerors that are joint ventures, the evaluation shall take into account past performance of the joint venture. If the joint venture does not demonstrate past performance for award, the contracting officer shall consider the past performance of each party to the joint venture.

\* \* \* \* \*

## PART 19—SMALL BUSINESS PROGRAMS

■ 5. Amend section 19.301–1 by revising paragraph (a) to read as follows:

### 19.301–1 Representation by the offeror.

(a)(1) To be eligible for award as a small business concern identified in 19.000(a)(3), an offeror is required to represent in good faith—

(i)(A) That it meets the small business size standard corresponding to the North American Industry Classification System (NAICS) code identified in the solicitation; or

(B) For a multiple-award contract where there is more than one NAICS

code assigned, that it meets the small business size standard for each distinct portion or category (e.g., line item numbers, Special Item Numbers (SINs), sectors, functional areas, or the equivalent) for which it submits an offer. If the small business concern submits an offer for the entire multiple-award contract, it must meet the size standard for each distinct portion or category (e.g., line item number, SIN, sector, functional area, or equivalent); and

(ii) The Small Business Administration (SBA) has not issued a written determination stating otherwise pursuant to 13 CFR 121.1009.

(2)(i) A joint venture may qualify as a small business concern if the joint venture complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b) and if—

(A) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(B) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under an SBA mentor-protégé program.

(ii) A joint venture may qualify for an award under the socioeconomic programs as described in subparts 19.8, 19.13, 19.14, and 19.15.

\* \* \* \* \*

■ 6. Amend section 19.703 by—

■ a. Removing from paragraph (a)(2)(i) and paragraph (a)(2)(ii) introductory text, the phrase “small business, or” and adding the phrase “small business, HUBZone small business, or” in its place, respectively; and

■ b. Revising paragraph (d).

The revision reads as follows:

**19.703 Eligibility requirements for participating in the program.**

\* \* \* \* \*

(d) Protests challenging the socioeconomic status of a HUBZone small business concern must be filed in accordance with 13 CFR 126.801.

\* \* \* \* \*

■ 7. Amend section 19.804–3 in paragraph (c) introductory text by adding a sentence to the end of the paragraph to read as follows:

**19.804–3 SBA acceptance.**

\* \* \* \* \*

(c) \* \* \* For a joint venture, SBA will determine eligibility as part of its acceptance of a sole-source requirement and will approve the joint venture agreement prior to award in accordance with 13 CFR 124.513(e).

\* \* \* \* \*

■ 8. Amend section 19.805–2 by revising paragraph (b) introductory text and adding paragraph (d) to read as follows:

**19.805–2 Procedures.**

\* \* \* \* \*

(b) The SBA will determine the eligibility of the apparent successful offeror. Eligibility is based on section 8(a) program criteria. See paragraph (d) of this section regarding eligibility of joint ventures.

\* \* \* \* \*

(d)(1) SBA does not certify joint ventures, as entities, into the 8(a) program.

(2) A contracting officer may consider a joint venture for contract award. SBA does not approve joint ventures for competitive awards (but see 13 CFR 124.501(g) for SBA’s determination of participant eligibility).

■ 9. Amend section 19.1303 by revising paragraph (c) to read as follows:

**19.1303 Status as a HUBZone small business concern.**

\* \* \* \* \*

(c) A joint venture may be considered a HUBZone small business concern if—

(1) The joint venture qualifies as small under 19.301–1(a)(2)(i);

(2) At least one party to the joint venture is a HUBZone small business concern; and

(3) The joint venture complies with 13 CFR 126.616(a) through (c).

\* \* \* \* \*

■ 10. Amend section 19.1403 by revising paragraph (c) to read as follows:

**19.1403 Status as a service-disabled veteran-owned small business concern.**

\* \* \* \* \*

(c) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) The joint venture qualifies as small under 19.301–1(a)(2)(i);

(2) At least one party to the joint venture is a service-disabled veteran-owned small business concern, and makes the representations in paragraph (b) of this section; and

(3) The joint venture complies with the requirements of 13 CFR 125.18(b).

\* \* \* \* \*

■ 11. Amend section 19.1503 by revising paragraph (f) to read as follows:

**19.1503 Status.**

\* \* \* \* \*

(f) A joint venture may be considered an EDWOSB concern or WOSB concern eligible under the WOSB Program if—

(1) The joint venture qualifies as small under 19.301–1(a)(2)(i);

(2)(i) At least one party to the joint venture is an EDWOSB for an EDWOSB joint venture, or at least one party to the joint venture is a WOSB for a WOSB joint venture; and

(ii) That party complies with the criteria in paragraph (b) of this section; and

(3) The joint venture complies with the requirements of 13 CFR 127.506(a) through (c).

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 12. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing from the introductory text of the provision the phrase “(c) through (v)” and adding the phrase “(c) through (v)” in its place;

■ c. In paragraph (a), revising paragraph (1) of the definition “Small business concern”;

■ d. Revising paragraphs (c)(1) and (3);

■ e. Removing from the end of paragraph (c)(6)(i) the word “and” and adding the word “or” in its place;

■ f. Revising paragraph (c)(6)(ii);

■ g. Removing from the end of paragraph (c)(7)(i) the word “and” and adding the word “or” in its place;

■ h. Revising paragraph (c)(7)(ii);

■ i. Revising the bracketed sentence in paragraph (c)(10);

■ j. Removing from the end of paragraph (c)(10)(i) the phrase “13 CFR Part 126; and” and adding the phrase “13 CFR 126.200; or” in its place; and

■ k. Revising paragraph (c)(10)(ii).

The revisions read as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Products and Commercial Services (OCT 2022)**

\* \* \* \* \*

(a) \* \* \*

*Small business concern*—(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

\* \* \* \* \*

(c) \* \* \*

(1) *Small business concern*. The offeror represents as part of its offer that—

(i) It  is,  is not a small business concern; or

(ii) It  is,  is not a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_\_.*]

\* \* \* \* \*

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that—

(i) It  is,  is not a service-disabled veteran-owned small business concern; or  
 (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR 125.18(b)(1) and (2). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each service-disabled veteran-owned small business concern participating in the joint venture shall provide representation of its service-disabled veteran-owned small business concern status.

\* \* \* \* \*  
 (6) \* \* \*

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall provide representation of its WOSB status.

(7) \* \* \*  
 (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each EDWOSB concern participating in the joint venture shall provide representation of its EDWOSB status.

**Note to Paragraphs (c)(8) and (9):**  
 Complete paragraphs (c)(8) and (9) only if this solicitation is expected to exceed the simplified acquisition threshold.

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

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall provide representation of its HUBZone status.

- \* \* \* \* \*
- 13. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Removing from paragraph (b)(11) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
- c. Removing from paragraph (b)(12) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
- d. Removing from paragraph (b)(16) the date “(OCT 2018)” and adding the date “(OCT 2022)” in its place;
- e. Removing from paragraph (b)(17)(i) the date “(NOV 2021)” and adding the date “(OCT 2022)” in its place;

- f. Removing from paragraph (b)(19) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
  - g. Removing from paragraph (b)(21) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
  - h. Removing from paragraph (b)(22)(i) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
  - i. Removing from paragraph (b)(23) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
  - j. Removing from paragraph (b)(24) the date “(SEP 2021)” and adding the date “(OCT 2022)” in its place;
  - k. Removing from paragraph (e)(1)(v) the date “(OCT 2018)” and adding the date “(OCT 2022)” in its place;
  - l. Revising the date of Alternate II; and
  - m. Removing from paragraph (e)(1)(ii)(E) of Alternate II the date “(OCT 2018)” and adding the date “(OCT 2022)” in its place.
- The revisions read as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.**

\* \* \* \* \*  
**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (OCT 2022)**

Alternate II (OCT 2022). \* \* \*

- 14. Amend section 52.213–4 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (a)(2)(viii) the date “(JAN 2022)” and adding the date “(OCT 2022)” in its place.

The revision reads as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).**

\* \* \* \* \*  
**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (OCT 2022)**

- \* \* \* \* \*
- 15. Amend section 52.219–1 by—
- a. Revising the date of the provision;
- b. In paragraph (a), revising paragraph (1) in the definition of “Small business concern”;
- c. Revising paragraph (c)(1);
- d. Removing from the end of paragraph (c)(4)(i) the word “and” and adding the word “or” in its place;
- e. Revising paragraph (c)(4)(ii);
- f. Removing from the end of paragraph (c)(5)(i) the word “and” and adding the word “or” in its place;
- g. Revising paragraphs (c)(5)(ii) and (c)(7);

- h. Removing from the end of paragraph (c)(8)(i) the phrase “13 CFR Part 126; and” and adding the phrase “13 CFR 126.200; or” in its place; and
  - i. Revising paragraph (c)(8)(ii).
- The revisions read as follows:

**52.219–1 Small Business Program Representations.**

\* \* \* \* \*  
**Small Business Program Representations (OCT 2022)**

\* \* \* \* \*  
*Small business concern*— (1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (b) of this provision.

\* \* \* \* \*  
 (c) \* \* \*  
 (1) The offeror represents as part of its offer that—

(i) It  is,  is not a small business concern; or  
 (ii) It  is,  is not a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.]

\* \* \* \* \*  
 (4) \* \* \*  
 (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall provide representation of its WOSB status.

\* \* \* \* \*  
 (5) \* \* \*  
 (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each EDWOSB concern participating in the joint venture shall provide representation of its EDWOSB status.

\* \* \* \* \*  
 (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—

- (i) It  is,  is not a service-disabled veteran-owned small business concern; or
  - (ii) It  is,  is not a service-disabled veteran-owned joint venture that complies with the requirements of 13 CFR 125.18(b)(1) and (2). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each service-disabled veteran-owned small business concern participating in the joint venture shall provide representation of its service-disabled veteran-owned small business concern status.
- (8) \* \* \*  
 (ii) It  is,  is not a HUBZone joint venture that complies with the requirements

of 13 CFR 126.616(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall provide representation of its HUBZone status.

\* \* \* \* \*

■ 16. Amend section 52.219–3 by revising the date of the clause and adding paragraphs (e) and (f) to read as follows:

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

\* \* \* \* \*

**Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022)**

\* \* \* \* \*

(e) *Joint venture.* A joint venture may be considered a HUBZone concern if—

- (1) At least one party to the joint venture is a HUBZone small business concern and complies with 13 CFR 126.616(c); and
(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(f) A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business party or parties to the joint venture must be more than administrative functions.

\* \* \* \* \*

■ 17. Amend section 52.219–4 by revising the clause title and date and adding paragraph (d) to read 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 2022)**

\* \* \* \* \*

(d) A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business parties to the joint venture must be more than administrative functions.

\* \* \* \* \*

- 18. Amend section 52.219–8 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a), revising the definition of “Small business concern”;
■ c. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and adding a new paragraph (c); and
■ d. Revising newly redesignated paragraph (e)(5) introductory text.

The revisions read as follows:

**52.219–8 Utilization of Small Business Concerns.**

\* \* \* \* \*

**Utilization of Small Business Concerns (OCT 2022)**

\* \* \* \* \*

(a) \* \* \*

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.

\* \* \* \* \*

(c)(1) A joint venture qualifies as a small business concern if—

- (i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or
(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

- (i) A service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125; or
(ii) A HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

\* \* \* \* \*

(e) \* \* \*

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern. If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing the System for Award Management or contacting SBA. Options for contacting the SBA include—

\* \* \* \* \*

- 19. Amend section 52.219–9 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (e)(4) the phrase “52.219–8(d)(2)” and adding the phrase “52.219–8(e)(2)” in its place.

The revision reads as follows:

**52.219–9 Small Business Subcontracting Plan.**

\* \* \* \* \*

**Small Business Subcontracting Plan (OCT 2022)**

\* \* \* \* \*

- 20. Amend section 52.219–14 by revising the date of the clause and paragraph (g) to read as follows:

**52.219–14 Limitations on Subcontracting.**

\* \* \* \* \*

**Limitations on Subcontracting (OCT 2022)**

\* \* \* \* \*

(g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.

(2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

\* \* \* \* \*

- 21. Amend section 52.219–18 by—
■ a. Revising the date of the clause and paragraph (a);
■ b. Removing from paragraph (b) the phrase “all of the” and adding the phrase “the applicable” in its place;
■ c. Adding a sentence to the end of paragraph (c); and
■ d. Revising Alternate I.

The revisions and addition read as follows:

**52.219–18 Notification of Competition Limited to Eligible 8(a) Participants.**

\* \* \* \* \*

**Notification of Competition Limited to Eligible 8(a) Participants (OCT 2022)**

(a) Offers are solicited only from—

(1) Small business concerns expressly certified by the Small Business Administration (SBA) for participation in SBA’s 8(a) program and which meet the following criteria at the time of submission of offer—

(i) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(ii) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by SBA;

(2) A joint venture, in which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause, that complies with 13 CFR 124.513(c); or

(3) A joint venture—

(i) That is comprised of a mentor and an 8(a) protégé with an approved mentor-protégé agreement under the 8(a) program;

(ii) In which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause; and

(iii) That complies with 13 CFR 124.513(c).

\* \* \* \* \*

(c) \* \* \* A contracting officer may consider a joint venture for contract award. SBA does not approve joint ventures for competitive awards, but see 13 CFR 124.501(g) for SBA’s determination of participant eligibility.

\* \* \* \* \*

*Alternate I* (OCT 2022). If the competition is to be limited to 8(a) participants within one or more specific SBA regions or districts, add the following paragraph (a)(1)(iii) to paragraph (a) of the clause:

(iii) The offeror's approved business plan is on the file and serviced by

\_\_\_\_\_[Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA].

■ 22. Amend section 52.219–27 by revising the date of the clause and paragraph (d) and adding paragraph (e) to read as follows:

**52.219–27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.**

\* \* \* \* \*

**Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022)**

\* \* \* \* \*

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) of this clause and 13 CFR 125.18(b)(2); and

(2) Each party to the joint venture is small under the size standard corresponding to the NAICS code assigned to the procurement, or the protégé is small under the size standard corresponding to the NAICS code assigned to the procurement in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under an SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (f) of this clause, the service-disabled veteran-owned small business party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the service-disabled veteran-owned small business party or parties to the joint venture must be more than administrative functions.

\* \* \* \* \*

■ 23. Amend section 52.219–28 by revising the date of the clause, and in paragraph (a) revising paragraph (1) of the definition of “Small business concern” to read as follows:

**52.219–28 Post-Award Small Business Program Rerepresentation.**

\* \* \* \* \*

**Post-Award Small Business Program Rerepresentation (OCT 2022)**

(a) \* \* \*

Small business concern—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause.

\* \* \* \* \*

■ 24. Amend section 52.219–29 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition “Economically disadvantaged women-

owned small business (EDWOSB)” removing the phrase “It automatically” and adding the phrase “An EDWOSB concern automatically” in its place;

■ c. Revising paragraph (d); and

■ d. Adding paragraph (e).

The revisions and addition read as follows:

**52.219–29 Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.**

\* \* \* \* \*

**Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022)**

\* \* \* \* \*

(d) *Joint Venture*. A joint venture may be considered an EDWOSB concern if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and paragraph (c)(3) of this clause, and 13 CFR 127.506(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (d) of this clause, the EDWOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the EDWOSB party or parties to the joint venture must be more than administrative functions.

\* \* \* \* \*

■ 25. Amend section 52.219–30 by revising the date of the clause and paragraph (d) and adding paragraph (e) to read as follows:

**52.219–30 Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.**

\* \* \* \* \*

**Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022)**

\* \* \* \* \*

(d) *Joint Venture*. A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and (c)(3) of this clause, and 13 CFR 127.506(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (d) of this clause, the WOSB party

or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the WOSB party or parties to the joint venture must be more than administrative functions.

\* \* \* \* \*

■ 26. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c)(1)(vii) the date “(OCT 2018)” and adding the date “(OCT 2022)” in its place.

The revision reads as follows:

**52.244–6 Subcontracts for Commercial Products and Commercial Services.**

\* \* \* \* \*

**Subcontracts for Commercial Products and Commercial Services (OCT 2022)**

\* \* \* \* \*

[FR Doc. 2022–20340 Filed 9–22–22; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 5, 12, 19, 36, and 43**

[FAC 2022–08; FAR Case 2018–020; Item II; Docket No. FAR–2018–0020, Sequence No. 1]

RIN 9000–AN78

**Federal Acquisition Regulation: Construction Contract Administration**

**AGENCY:** 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 implement a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, to require agencies to provide a notice along with the solicitation to prospective bidders and offerors regarding definitization of requests for equitable adjustment related to change orders under construction contracts.

**DATES:** Effective October 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana Bowman, Procurement Analyst, at 202–803–3188, or by email at [dana.bowman@gsa.gov](mailto:dana.bowman@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2022–08, FAR Case 2018–020.