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POLICY ISSUED FOR SET-ASIDES OF ORDERS FOR SMALL BUSINESSES UNDER MULTIPLE-AWARD CONTRACTS

Federal Acquisition Circular (FAC) 2020-05 is amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) that provide governmentwide policy regarding the use of small business partial set-asides, reserves, and set-asides of orders for small business concerns under multiple-award contracts (MACs).

SBA’s regulatory changes implement the statutory requirements in the Small Business Jobs Act of 2010 (Public Law 111-240), Section 1331, Reservation of Prime Contract Awards for Small Businesses, which provides that small business set-asides may be used in the

placement of orders under MACs regardless of the requirement to provide each contract holder a fair opportunity to be considered. (EDITOR’S NOTE: MACs include Multiple Award Schedules contracts managed by the General Services Administration (GSA) (also called “Federal Supply Schedules”); government-wide acquisition contracts (GWACs); multi-agency contracts; and agency-specific indefinite-delivery indefinite-quantity (IDIQ) contracts.)

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Section 1331 of the Small Business Jobs Act of 2010 (see the October 2010 *Federal Contracts Perspective* article “Parity Among Small Business Programs Mandated by Statute”) provided authority for three acquisition techniques to facilitate contracting with small businesses on MACs: (1) setting aside part or parts of the requirement for small businesses; (2) reserving one or more contract awards for small business concerns under full and open multiple-award procurements; and (3) setting aside orders placed against MACs, “notwithstanding the fair opportunity requirements” (see paragraph (b)(1) of FAR 16.505, Ordering [under indefinite-delivery contracts], which states “the contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,500 issued under multiple delivery-order contracts or multiple task-order contracts...”).

FAC 2005-54 included an interim rule that provided federal agencies with guidance they could use to implement Section 1331 while SBA completed the drafting and coordination of a rule that would provide specific guidance. The interim rule made the following changes to the FAR:

- FAR 8.405-5, Small Business [participation in Federal Supply Schedules], was revised to make clear that set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules.
- FAR 12.207, Contract Type [for acquisition of commercial items], was amended to acknowledge that discretionary set-asides may be used if placing an order under a multiple-award delivery-order contract for commercial items.
- FAR 16.505, Ordering, was revised with the addition of text acknowledging that set-asides may be used in connection with the placement of orders under MACs, notwithstanding the requirement to provide each contract holder a fair opportunity to be considered.
- FAR 19.502-4, Multiple-Award Contracts and Small Business Set-Asides, was added to authorize agencies to: (1) use set-asides under MACs for exclusive competitive participation by small businesses, 8(a) business development (BD) participants, HUBZone small business concerns (SBCs), service-disabled veteran-owned small businesses (SDVOSBs), and economically disadvantaged women-owned small businesses (EDWOSBs) and women-owned small businesses (WOSBs); and (2) reserve one or more contract awards under MACs for these small businesses.
- FAR 38.101, General [Federal Supply Schedule Program], was amended to add a reference to FAR 8.405-5 to make clear that order set-asides may be used in connection with the placement of orders and blanket purchase agreements under Federal Supply Schedules.
- FAR 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award; FAR 52.219-6, Notice of Total Small Business Set-Aside; FAR 52.219-13, Notice of Set-Aside of Orders; FAR 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside; FAR 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns; and FAR 52.219-30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, were amended to provide notice of total set-asides and partial set-asides under MACs.
- FAR 52.219-14, Limitations on Subcontracting, was revised to address limitations on subcontracting for small businesses under MACs.

For more on the FAC 2005-54 interim rule, see the December 2011 *Federal Contracts Perspective* article “FAC 2005-54 Permits Small Business Set-Asides For Multiple-Award Contracts.”

In 2013, SBA issued its final regulations implementing Section 1331. The following were the significant changes made to SBA’s regulations in Title 13 of the Code of Federal Regulations

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(CFR), Business Credit and Assistance, Part 121, Small Business Size Regulations; Part 124, 8(a) Business Development/Small Disadvantaged Business Status Determinations; Part 125, Government Contracting Programs; Part 126, HUBZone Program; and Part 127, Women-Owned Small Business Federal Contract Program:

- “Partial set-aside for a multiple award contract” was redefined as “a contracting vehicle that can be used when: market research indicates that a total set-aside is not appropriate; the procurement can be broken up into smaller discrete portions or discrete categories such as by Contract Line Items, Special Item Numbers, Sectors or Functional Areas or other equivalent; and two or more small business concerns, 8(a) BD participants, HUBZone SBCs, SDVOSBs, WOSBs or EDWOSBs are expected to submit an offer on the set-aside part or parts of the requirement at a fair market price.”

In addition, the cumbersome process that was described in FAR 19.502-3, Partial Set-Asides, in which small businesses were required to submit responsive offers on the non-set-aside portion of the acquisition to be considered for the set-aside portion, was replaced with “the small business must submit one offer that addresses each part of the solicitation for which it wants to compete. A small business (or 8(a) participant, HUBZone SBC, SDVOSB or EDWOSB) is not required to submit an offer on the part of the solicitation that is not set-aside. However, a small business may choose to submit an offer on the part or parts of the solicitation that have been set-aside and/or on the parts that have not been set-aside.”

- A process was established for agencies to reserve awards for small businesses under a MAC awarded through full and open competition if the requirement cannot be broken into discrete components to support a partial set-aside and market research shows that either: (1) at least two small businesses could perform on a part of the contract; or (2) at least one small business could perform all of the contract. The orders must be set-aside for small businesses under a reserved contract if the “rule of two” or any alternative set-aside requirements provided in SBA’s small business programs have been met.
- A process was established that permits agencies, when awarding MACs through full and open competition without either partial set-asides or reserves, to make commitments to set aside orders, or preserve the right to consider set-asides, when the “rule of two” is met.
- Mechanisms for allowing small businesses to enter and exit a contract during the performance period – “on- and off-ramps”, were addressed. Specifically, in MACs that had been totally or partially set-aside, if a small business awarded a total or partial set-aside MAC becomes other than small as a result of a merger or acquisition, it is up to the contracting officer to decide whether to terminate, or “off-ramp” the contractor. In addition, SBA recommended that agencies consider including in MAC solicitations an “on ramp” provision that permits the agency to refresh these awards by adding more small business contractors to that portion of the MAC that was set-aside throughout the life of the contract.
- Previously, a predominant North American Industry Classification System (NAICS) code and size standard was required for all contracts and all orders. The revised regulations provided several alternatives to ensure every contract and every order issued against a contract contains a NAICS code with a corresponding size standard, and that coding for

orders more accurately reflects the size of the business for the work being performed. For example, a contracting officer could divide a MAC for various types of goods and services into discrete categories (which could be by contract line item numbers, special item numbers, functional areas, sectors, or any other means for identifying various parts of a requirement identified by the contracting officer), each of which is assigned a NAICS code with a corresponding size standard. Alternatively, the contracting officer could assign one NAICS code and corresponding size standard to the MAC if all of the orders issued against that contract can be classified under that same NAICS code and corresponding size standard.

- When an order is set-aside under a contract awarded through full and open competition or under a contract reserve, or is issued against a set-aside or partial-set aside MAC, the contractor must comply with the limitation on subcontracting and the nonmanufacturer rule for that order.
- The revised regulations required that a concern qualify as small at the time of its initial offer for the agreement (which includes Blanket Purchase Agreements (BPAs) (except for BPAs issued against a GSA Schedule contract), Basic Agreements, Basic Ordering Agreements (BOAs), or any other agreement for which a contracting officer sets aside or reserves awards to any type of small business). In addition, because an agreement is not a contract, the concern is required to qualify as small for each order issued under the agreement to be considered small for the order and for an agency to receive small business goaling credit for the order.
- An agency may not conduct an acquisition that is a consolidation of contract requirements unless the senior procurement executive or chief acquisition officer justifies the consolidation by showing that the benefits of the consolidated acquisition substantially exceed the benefits of each possible alternative approach that would involve a lesser degree of consolidation, and identifies the negative impact on small businesses.

For more on the SBA's revised regulations, see the November 2013 *Federal Contracts Perspective* article "SBA Issues Rules for Setting Aside Task Order Contracts, Contract Consolidation, and Bundling."

To conform the FAR with the SBA's final regulations, a proposed rule was issued in 2016 and comments were requested (see the January 2017 *Federal Contracts Perspective* article "Multiple-Award Contract Set-Asides to be Revised"). The rule proposed to make the following changes:

- Retitle FAR 19.102, Size Standards, as "Small Business Size Standards and North American Industry Classification System Codes," and give contracting officers the discretion to: (1) assign one NAICS code (and corresponding size standard) to the entire solicitation; or (2) when the procurement can be divided into portions or categories, assign each a NAICS code and corresponding size standard that best describes the principal purpose attributed to the part or category.
- Retitle FAR 19.502-3, Partial Set-Asides, as "Partial Set-Asides of Contracts Other than Multiple-Award Contracts," and FAR 19.502-4, Multiple-Award Contracts and Small

Business Set-Asides, as “Partial Set-Asides of Multiple-Award Contracts.” They would be revised to expand and improve the overall process. In addition, FAR 52.219-7, Notice of Partial Small Business Set-Aside, would be amended to replace the existing, cumbersome procedures for awarding contracts under the set-aside and non-set-aside portions with a new, more simplified approach – small businesses wishing to participate on the partial set-aside portion of the acquisition would no longer be required to submit offers on the non-set-aside portion. Finally, new language would be added to clarify the requirements for issuing orders against the set-aside and non-set-aside portions of MACs.

- FAR 19.503, Reserves, would be added to include substantial coverage for the new concept of a “reserve.” A reserve would be used in solicitations for MACs when a total or a partial set-aside of the work is not feasible but the agency wants to be sure that small businesses participate at the prime contract level. A new clause, FAR 52.219-31, Notice of Small Business Reserve, would be added, too.
- FAR 19.504, Setting Aside Orders Under Multiple-Award Contracts, would be added to provide several new methodologies: (1) orders under partial set-asides; (2) orders under reserves; and (3) orders under full and open competition.
- FAR 19.505, Performance of Work Requirements, would be added to consolidate the limitations on subcontracting and the nonmanufacturer rule (limitations on subcontracting are the minimum percentages of work the prime small business contractor must itself perform under a contract awarded through a set-aside; the nonmanufacturer rule requires a concern that proposes to furnish a product it did not manufacture or produce under a small business set-aside to have fewer than 500 employees and provide the product of a small business manufacturer). In addition, a new clause FAR 52.219-33, Nonmanufacturer Rule, would be added.
- Changes would be made throughout the FAR to reflect these changes and the SBA’s revised regulations, particularly in FAR subpart 16.5, Indefinite-Delivery Contracts; FAR subpart 19.3, Determination of Small Business Status for Small Business Programs; FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program); FAR subpart 19.13, Historically Underutilized Business Zone (HUBZone) Program; FAR subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program; and FAR subpart 19.15, Women-Owned Small Business (WOSB) Program.

Fourteen respondents submitted comments on the proposed rule, and in response this rule finalizes the FAC 2005-54 interim rule and the FAR proposed rule with many changes. The following are the significant changes made in this final rule to the interim rule and proposed rule:

- FAR 4.1202, Solicitation Provision and Contract Clause [for representations and certifications], is revised to require that FAR 52.204-8, Annual Representations and Certifications, with its Alternate I be in solicitations issued after October 1, 2022, that will result in a MAC with more than one NAICS code assigned. The new Alternate I has been added to allow small businesses to represent their status as a small business for solicitations of MACs that have more than one NAICS code assigned. Before October 1, 2022, agencies

may continue awarding MACs using any existing authorities, including any addressed in this rule, but shall continue to report one NAICS code and size standard which best describes the principal purpose of the supplies or services being acquired. (The proposed rule had required the inclusion of Alternate I after January 31, 2017.)

- FAR 19.102, Small Business Size Standards and North American Industry Classification System Codes, is revised to clarify that NAICS code(s) must be assigned to all solicitations, contracts, and task and delivery orders, and that the NAICS code assigned to a task or delivery order must be a NAICS code assigned to the MAC.
- FAR 19.301-1, Representation by the Offeror, is revised to clarify that, for orders under BOAs and BPAs issued under FAR part 13, Simplified Acquisition Procedures, offerors must be a small business concern at the time of award of the order.
- FAR 19.301-2, Rerepresentation by a Contractor That Represented Itself as a Small Business Concern, is revised to clarify that, for MACs with more than one NAICS code assigned, a contractor must rerepresent its size status for each of those NAICS codes. A new Alternate I is added to FAR 52.219-28, Post-Award Small Business Program Rerepresentation, to allow rerepresentations for multiple NAICS codes. Alternate I will be included in solicitations that will result in MACs with more than one NAICS code.
- In FAR 19.601, General [certificates of competency and determinations of responsibility], the proposed phrase “domestically produced or manufactured product” is replaced with “end item produced or manufactured in the United States or its outlying areas.”
- The requirement for contracting officers to document contractor compliance with the limitations on subcontracting is removed from FAR subpart 19.5, Set-Asides for Small Business; FAR subpart 19.8; FAR subpart 19.13; FAR subpart 19.14; and FAR subpart 19.15. FAR part 4, Administrative and Information Matters, and FAR subpart 42.15, Contractor Performance Information, already prescribe documentation of contractor compliance with various contract terms and condition including the limitations on subcontracting. However, FAR subpart 42.15 is revised to clarify that performance assessments shall include a contractor’s failure to comply with the limitations on subcontracting.
- FAR subpart 19.7, The Small Business Subcontracting Program, is revised to provide guidance to contracting officers on how to apply the requirement for small business subcontracting plans to MACs assigned multiple NAICS codes. With the requirement to assign multiple NAICS codes, it will be possible for a contractor to be both a small business concern and an other than small business concern for a single contract.
- The final rule clarifies that the limitations on subcontracting and the nonmanufacturer rule apply to orders issued directly to one small business under a MAC with reserves. These clarifications appear in FAR subpart 19.8; FAR subpart 19.13; FAR subpart 19.14; FAR subpart 19.15; FAR 52.219-3, Notice of HUBZone Set-Aside or Sole Source Award; FAR 52.219-14, Limitations on Subcontracting; FAR 52.219-27, Notice of Service-Disabled

Veteran-Owned Small Business Set-Aside; FAR 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns; and FAR 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.

- The conditions under which an order may be issued directly to an 8(a) contractor under a reserve is clarified in FAR 19.804-6, Indefinite-Delivery Contracts [evaluation, offering, and acceptance under the 8(a) program].
- FAR subpart 19.13 is revised to clarify that the HUBZone price evaluation preference shall not be used for the reserved portion of a solicitation for a MAC. The price evaluation preference shall be used in the portion of a solicitation for a MAC that is not reserved. In addition, FAR 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, is revised to remove the proposed text that would have stated the HUBZone price evaluation preference did not apply to solicitations that have a reserve for HUBZone small business concerns.
- FAR 19.1308, Performance of Work Requirements (Limitations on Subcontracting) for General Construction or Construction by Special Trade Contractors, is revised to specify performance by a HUBZone small business concern instead of performance in a HUBZone.
- The final rule provides a new FAR 52.219-31, Notice of Small Business Reserve, to address information and requirements that are related to reserves of MACs and are appropriate for inclusion only in the solicitation. The information and requirements were proposed to be part of the new clause FAR 52.219-32, Orders Issued Directly Under Small Business Reserves, but since the information and requirements must be furnished prior to contract award, it was decided to relocate them to a separate provision.

CHANGES PROPOSED TO ASSETS SURETIES MUST PLEDGE

To implement the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Public Law 114-92), Section 874, Surety Bond Requirements and Amount of Guarantee, a rule is proposed that would amend FAR part 28, Bonds and Insurance, FAR 52.228-11, Individual Surety – Pledges of Assets, and add FAR 52.228-XX, Individual Surety – Pledge of Assets (Bid Guarantee), to change the kinds of assets that individual sureties must pledge as security for their individual surety bonds, and require the Department of the Treasury to review those assets to ensure they meet established eligibility requirements.

Section 874 added to Title 31 of the U.S. Code (USC), Money and Finances, new Section 3910 (31 USC 3910), Individual Sureties, which provides that when federal law permits acceptance of a surety bond from a surety that is not a corporate surety, the individual surety must pledge assets that are “eligible obligations”; eligible obligations are public debt obligations of the United States government. The requirements of 31 USC 3910 are intended to strengthen the assets pledged by individual sureties, thus mitigating risk to the government.

To implement Section 874, the following revisions to the FAR are proposed:

- A new section heading, FAR 28.203, Individual Sureties, would be added (current FAR 28.203, Acceptability of Individual Sureties, would be redesignated as FAR 28.203-1).
- The current language in FAR 28.203(a), which requires contracting officers to determine the acceptability of individuals proposed as sureties would be moved to redesignated FAR 28.203-1(c) and revised (see below).
- Redesignated FAR 28.203-1(b) would be divided into four subparagraphs:
 - Subparagraph (b)(1) would identify the three types of bonds: bid bond (Standard Form 24), performance bond (Standard Form 25), and payment bond (Standard Form 25A).
 - In subparagraph (b)(2), the existing text – “the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety, must equal or exceed the penal amount of each bond” – would be changed to “the net adjusted value of unencumbered assets is their market value minus the margin. The margin tables are available at www.treasurydirect.gov. The net adjusted value of unencumbered assets pledged by the individual surety must equal or exceed the penal amount (*i.e.*, face value) of each bond.” This change clarifies the intent and context of the valuation requirement. The phrase “market value minus the margin” clarifies that pledged assets are subject to a percentage reduction (“margin”) from the market value to account for a risk premium.
 - In subparagraph (b)(3), the name of the Standard Form 28, Affidavit of Individual Surety, would be added. This is an administrative change to meet FAR drafting conventions.
 - In subparagraph (b)(4), which currently states “An offeror may submit up to three individual sureties for each bond, in which case the pledged assets, when combined, must equal or exceed the penal amount of the bond,” the phrases “or contractor” and “net adjusted value” would be added so that it would read “An offeror *or contractor* may submit up to three individual sureties for each bond, in which case the *net adjusted value of the pledged unencumbered* assets, when combined, must equal or exceed the penal amount of the bond” (*emphasis added*). The addition of “or contractor” would clarify when bonds are submitted postaward, and the addition of “net adjusted value” and “unencumbered” clarify what is to equal or exceed the penal amount of the bond.
- Current FAR 28.203(c) would be redesignated as FAR 28.203-1(e). New paragraph (c) would clarify that the pledge of assets by an individual surety shall be submitted to the contracting officer, who will then notify the Department of the Treasury of the existence of the individual surety, the assets to be pledged, and the amount necessary to cover the individual surety bond. In addition, new paragraph (c) would require contracting officers to determine whether the individual surety bond is acceptable as to the amount necessary to cover the individual surety bond, based on the asset eligibility and valuation assessment from the Department of the Treasury, and notify both the offeror or contractor and the individual surety of this determination.

- Current FAR 28.203(d) would be redesignated as FAR 28.203-1(f). New FAR 28.203-1(f) would require the contracting officer to request the Department of the Treasury operations support team set up the individual surety asset collateral account for each contract.
- Current FAR 28.203(e) and (f) would be deleted.
- Current FAR 28.203-1, Security Interests by an Individual Surety; FAR 28.203-2, Acceptability of Assets; and FAR 28.203-3, Acceptance of Real Property, would be deleted. FAR 28.203-2 would be deleted because the acceptability of assets is governed under Department of the Treasury regulations and instructions, and FAR 28.203-3 would be deleted because real property is no longer an acceptable form of collateral.
- Current FAR 28.203-4, Substitution of Assets; FAR 28.203-5, Release of Lien; FAR 28.203-6, Contract Clause; and FAR 28.203-7, Exclusion of Individual Sureties, would be redesignated as FAR 28.203-2 through FAR 28.203-5, respectively.
- The redesignated FAR 28.203-3 would be retitled “Release of Security Interest,” and the reference to Optional Form 90, Release of Lien on Real Property, would be deleted because real property is no longer considered an eligible obligation under 31 USC 3910. References to Optional Form 90 would also be removed from FAR 53.228, Bonds and Insurance [forms], and FAR 53.300, Listing of Standard, Optional, and Agency Forms.
- FAR 52.228-XX, Individual Surety – Pledge of Assets (Bid Guarantee), would be added to distinguish instructions to offerors from instructions to a contractor, by relocating the “offeror” language from FAR 52.228-11.
- FAR 52.228-11, Individual Surety – Pledges of Assets, would be modified to remove instructions to offerors (which would be moved to DFARS 252.228-XX) and address contractor requirements for using an individual surety for a performance or payment bond consistent with redesignated FAR 28.203-1.

Comments on this proposed rule must be submitted no later than April 13, 2020, identified as “FAR Case 2017-003,” by either of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; or (2) mail: General Services Administration, Regulatory-Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd floor, Washington, DC 20405.

THREE DEVIATIONS ISSUED BY DOD

The Department of Defense (DOD) eased up on the Defense FAR Supplement (DFARS) in February. DOD didn't issue any final rules amending the DFARS, interim rules, or proposed rules, only issuing three deviations!

■ **Deviation on Reporting Loss of Government Property:** This deviation requires contractors to report the loss of government property in the Government-Furnished Property (GFP) module of the Procurement Integrated Enterprise Environment (PIEE – <https://wawf.eb.mil/piee-landing/>), in lieu of the Defense Contract Management Agency (DCMA) eTool software application (<http://www.dcmamil/WBT/propertyloss/>). Losses previously reported in the DMCA eTool will be processed to completion and will not be transferred into the GFP module.

This deviation applies to DOD solicitations and contracts that include FAR 52.245-1, Government Property. DFARS 252.245-7002, Reporting Loss of Government Property, is required to be included in solicitations and contracts that include FAR 52.245-1. DFARS 252.245-7002(b)(1) requires the reporting of government property loss to the DCMA eTool. This deviation requires that DFARS 252.245-7002, Reporting Loss of Government Property (DEVIATION 2020-O0004) be used instead. Paragraph (b)(1) of DFARS 252.245-7002 (DEVIATION 2020-O0004) requires that government property loss be reported in the PIEE GFP module.

In addition, DFARS 245.102, General [government property], paragraph (5), *Reporting Loss of Government Property*, requires the reporting of government property loss to the DCMA eTool. The deviation substitutes the following as paragraph (5) of DFARS 245.102, Policy (DEVIATION 2020-O0004): “(5) *Reporting loss of government property.* The Property Loss Function in the Government Furnished Property (GFP) module of the Procurement Integrated Enterprise Environment (PIEE) is the DOD data repository for reporting loss of government property in the possession of contractors. The requirements and procedures for reporting loss of government property to the GFP Module are set forth in the clause at 252.245-7002, Reporting Loss of Government Property (DEVIATION 2020-O0004).”

■ **Deviation Prohibiting Contracting with Persons Who Have Business Operations with the Maduro Regime:** This deviation consists of a new provision, DFARS 252.225-7974, Representation Regarding Persons that have Business Operations with the Maduro Regime (DEVIATION 2020-O0005), which is required to be included in all solicitations, including those using the procedures in FAR part 12, Acquisition of Commercial Items, except for contracts that are: (1) jointly determined by the Secretary of Defense and Secretary of State to be necessary for purposes of (a) providing humanitarian assistance to the people of Venezuela; (b) disaster relief and other urgent lifesaving measures; or (c) carrying out noncombatant evacuations; or (2) vital to the national security interests of the United States; or (3) related to the operation and maintenance of the United States government's consular offices and diplomatic posts in Venezuela.

This deviation implements the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Public Law 116-92), Section 890, Prohibition on Contracting with Persons That Have Business Operations with the Maduro Regime, which prohibits entering into a contract for the procurement of products or services with any person that has business operations with an

authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States government, unless an exception applies.

With DFARS 252.225-7974 (DEVIATION 2020-O0005), offerors represent, by submission of its offer, that it “(1) Does not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government; or (2) has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.”

■ **Deviation Restricting the Acquisition of Tantalum:** This deviation requires that DFARS 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten (DEVIATION 2020-O0006), be used instead of DFARS 252.225-7052, Restriction on the Acquisition of Certain Magnets and Tungsten.

This deviation implements the NDAA for FY 2020 (Public Law 116-92), Section 849, Modification of Prohibition on Acquisition of Sensitive Materials from Non-Allied Foreign Nations, which adds “tantalum metals and alloys” to the definition of “covered materials” in Title 10 of the U.S. Code (USC), Section 2553c, Prohibition on Acquisition of Sensitive Materials from Non-Allied Foreign Nations (10 USC 2533c). With some exceptions, 10 USC 2533c prohibits the acquisition of any “covered material” melted or produced in any covered country (defined as North Korea, China, Russia, or Iran), or any end item, manufactured in any covered country, that contains a “covered material”. “Covered material” is defined as including samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished components containing tungsten heavy alloy.

To implement Section 849, this deviation requires the inclusion of DFARS 252.225-7052 (DEVIATION 2020-O0006) in solicitations and contracts, including those using the procedures in FAR part 12, Acquisition of Commercial Items, that exceed the simplified acquisition threshold (\$250,000) unless the acquisition is for the purchase of items outside the United States for use outside the United States or a nonavailability determination is executed in accordance with DFARS 225.7018-4, Nonavailability Determination. DFARS 252.225-7052 (DEVIATION 2020-O0006) includes “tantalum metal and alloy” as a “covered material,” and provides that “for production of tantalum metal and alloys, this restriction includes the reduction of tantalum chemicals such as oxides, chlorides, or potassium salts, to metal powder and all subsequent phases of production of tantalum metal and alloys, such as consolidation of metal powders and melting.”

SBA PROPOSES REMOVING FOUR SDVO SBC REGULATIONS

The Small Business Administration (SBA) is proposing to remove from the Code of Federal Regulations (CFR) four regulations in the Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) Program that are no longer necessary because they are unnecessary or redundant.

The SBA’s regulations governing the SDVO SBC program are in Title 13 of the Code of Federal Regulations (CFR), part 125, Government Contracting Programs (13 CFR part 125). These regulations allow agencies to set aside contracts for SDVO SBCs. In addition, federal agencies may award sole source contracts to SDVO SBCs provided the award is made at a fair

and reasonable price and the anticipated total value of the contract, including any options, is below \$4 million (\$6.5 million for manufacturing contracts).

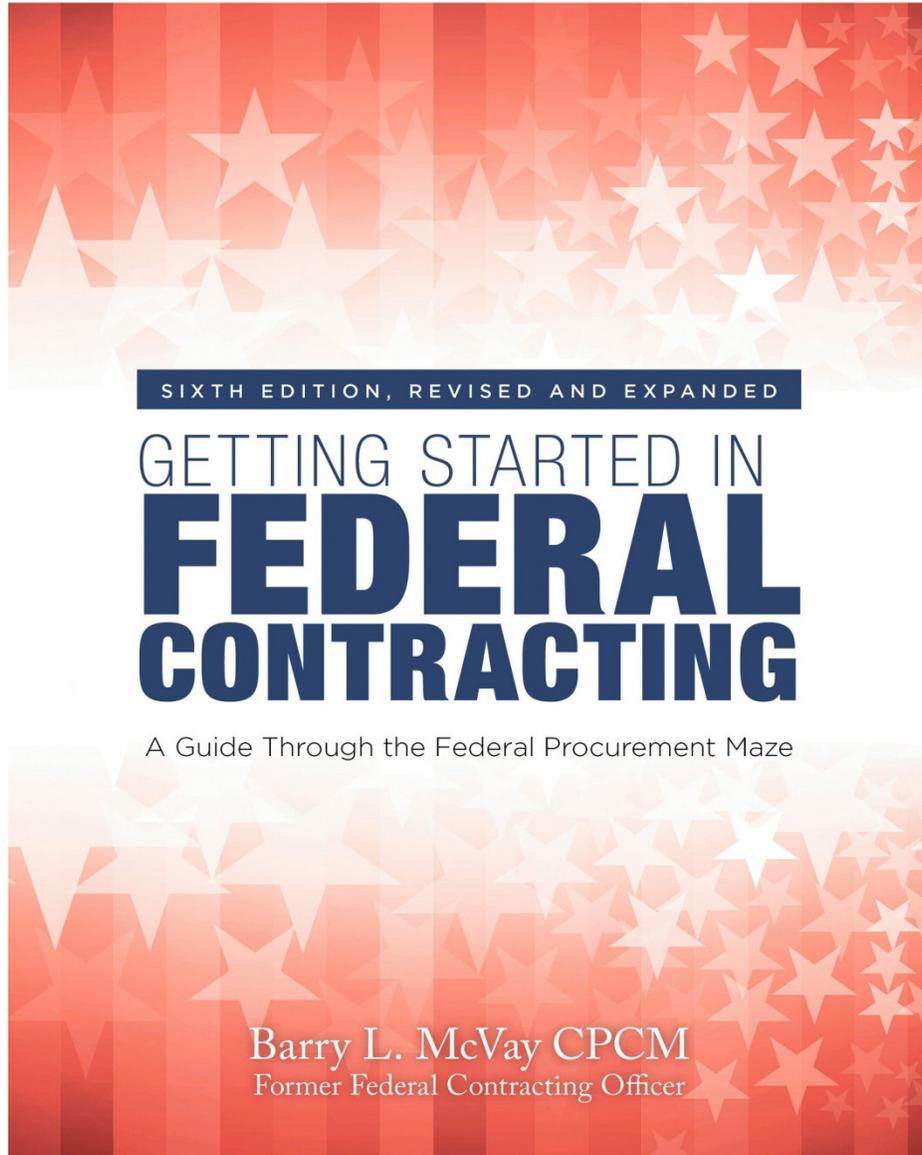
The following four SDVO SBC regulations are proposed for removal, along with the reasons for their proposed removals:

- **13 CFR 125.15, May an SDVO SBC have affiliates?:** 13 CFR 125.15 provides that an SDVO SBC may have affiliates. This is redundant because whether an SDVO SBC can have an affiliate is addressed in 13 CFR 121.103, How does SBA determine affiliation?
- **13 CFR 125.16, May 8(a) program participants, HUBZone SBCs, small and disadvantaged businesses, or women-owned small businesses qualify as SDVO SBCs?:** 13 CFR 125.16 states that an SDVO SBC may qualify for other SBA contracting programs. This regulation is unnecessary because the requirements for an SDVO SBC to qualify for other programs are addressed in the rules on eligibility for those specific programs.
- **13 CFR 125.19, Does SDVO SBC status guarantee receipt of a contract?:** 13 CFR 125.19 states that an SDVO SBC is not guaranteed receipt of a contract. This is unnecessary because nothing in SBA's regulations indicates that qualification as an SDVO SBC entitles a firm to a contract.
- **13 CFR 125.20, Who decides if a contract opportunity for SDVO competition exists?:** 13 CFR 125.20 is redundant because 13 CFR 125.22, When may a contracting officer set-aside a procurement for SDVO SBCs?, and 13 CFR 125.23, When may a contracting officer award sole source contracts to SDVO SBCs?, already provide that contracting officers make SDVO SBC competition decisions.

Comments on this proposed rule must be submitted no later than April 60, 2020, identified as "RIN: 3245-AH14," by any of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; or (2) mail or hand delivery/courier to : Brenda Fernandez, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

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