



Billing Code: 8026-03

## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Parts 124, 125, and 129**

#### **RIN 3245-AH18**

### **Use of Federal Surplus Personal Property for Veteran-Owned Small Businesses and Small Businesses in Disaster Areas and Puerto Rico**

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This rule is proposing to expand access for certain small business concerns in varying circumstances to the U.S. General Services Administration's (GSA) Federal Surplus Personal Property Donation Program in accordance with the Recovery Improvements for Small Entities After Disaster Act of 2015 (RISE Act), the Veterans Small Business Enhancement Act, and the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA). The statutes provide that small businesses in disaster areas, veteran-owned small businesses, and small business concerns located in Puerto Rico, respectively, should be considered for surplus personal property distributions. SBA, in coordination with GSA, is proposing certain procedures for determining which firms may participate in GSA's existing surplus personal property Program, and under what conditions.

DATES: Comments must be received on or before [60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AH18 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- For mail, paper, disk, or CD-ROM submissions: Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8th Floor, Washington, DC 20416.
- Hand Delivery/Courier: Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8th Floor, Washington, DC 20416.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please submit the information to Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416, or send an email to [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, Office of Policy, Planning and Liaison, 409 Third Street, SW, Washington, DC 20416; (202) 205-7337; [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### General Background

SBA is proposing this rule to implement three new statutory programs regarding the transfer of surplus personal property to certain small businesses. The first, authorized by section 2105 of Public Law 114-88 (Recovery Improvements for Small Entities After Disaster Act of 2015 or the RISE After Disaster Act of 2015 (RISE After Disaster Act)), contains provisions authorizing the transfer of surplus personal property to small businesses under certain conditions

in disaster areas. The second, authorized by Public Law 115-416 (Veterans Small Business Enhancement Act), contains provisions authorizing the transfer of surplus personal property to certain veteran-owned small businesses. The third, authorized by section 861 of Public Law 115-232 (John S. McCain National Defense Authorization Act for Fiscal Year 2019), authorizes small business concerns located in Puerto Rico to also receive federal surplus personal property under certain conditions. After discussions with GSA, SBA has modified the title of this proposed regulation to more clearly state that it covers the disposition of “personal” not “real” property through GSA’s programs. Therefore, the previous title for the proposed regulations, used in SBA’s designation sheet (Use of Federal Surplus Property for Veteran Owned Small Businesses and Small Businesses in Disaster Areas and Puerto Rico), was changed to “Use of Federal Surplus Personal Property for Veteran-Owned Small Businesses and Small Businesses in Disaster Areas and Puerto Rico”.

GSA operates the Federal Surplus Personal Property Donation Program (Program) under the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and other applicable laws, see 41 CFR 102-37. Currently, eligible state and local government agencies and nonprofit organizations can obtain personal property that the federal government no longer needs through the Program. More information is available on the GSA website at <https://www.gsa.gov/buying-selling/government-property-for-sale-or-disposal/personal-property-for-reuse-sale/for-state-agencies-and-public-organizations/>.

#### The Veterans Small Business Enhancement Act

The Veterans Small Business Enhancement Act, Public Law No: 115-416 (1/3/19), codified in the Small Business Act at 15 U.S.C 657b(g), provides that veteran-owned small

business should have access to surplus government personal property. SBA is proposing to add a new subpart F to 13 CFR part 125 to implement these changes.

SBA is proposing to add § 125.100 to detail the requirements of this Program. The proposed language is similar in some respects to the surplus personal property regulations for SBA's 8(a) Business Development (BD) program (13 CFR 124.405 How does a Participant obtain Federal Government surplus property?), but does differ in some significant ways. There are certain statutory requirements that are unique to each program, and the differences in the regulations will reflect that. Key to the difference is that the 8(a) BD program is a business development program and the Small Business Act contains several provisions with regard to the transfer of surplus personal property that reflect this difference--specifically, that 8(a) BD participants must retain received surplus personal property for the duration of their time in the program and for one year after graduation. This means that 8(a) BD participants are subject to additional compliance requirements that other parties that receive surplus personal property through GSA's Program are not. Thus, there are additional compliance requirements unique to the 8(a) program that are not necessary for veteran-owned small businesses. GSA and the State Agencies for Surplus Property (SASPs) already maintain a compliance and oversight role with regard to the distribution of surplus personal property. As such, veteran-owned small business concerns that receive surplus personal property will generally follow the same guidelines and procedures as other recipients through GSA's Program. The proposed language in § 125.100(a) references the regulations that govern the GSA Program, and the requirements that concerns will need to meet to use the Program.

SBA is proposing to add § 125.100(b)(1) to incorporate the requirement that concerns will need to be verified as a small business owned and controlled by veterans by the Department

of Veteran Affairs in order to be eligible for this Program. 38 CFR part 74. This requirement is incorporated directly from the Small Business Act and can be found at 15 U.S.C. 657b(g)(2).

SBA is proposing to add § 125.100(c) to provide the requirements for the use of surplus personal property received, and repercussions for misuse of the surplus personal property. The proposed language references GSA and SASP guidelines for use of surplus personal property, because as mentioned above, veteran-owned small businesses will be treated similarly to other recipients with regard to use, maintenance, and retention of surplus personal property.

SBA is proposing to add § 125.100(d) to provide notice that there are costs associated with receiving the surplus personal property. As noted above, the costs will be calculated by the individual SASP pursuant to 41 CFR 102-37 appendix B (e) and the SASP's State Plan of Operation and veteran-owned small business concerns will be treated similarly to other recipients.

SBA is proposing to add § 125.100(e) to provide notice of the type of title that veteran-owned small business concerns will receive. They will not be receiving full title at the time of transfer. They will be receiving conditional title and full title will transfer when they have met all the requirements of GSA and the SASP. Once again as noted above, this procedure will have veteran-owned small business concerns treated in a similar manner to other recipients of surplus personal property through GSA's Program.

#### RISE After Disaster Act

Section 2105 of the RISE After Disaster Act authorizes SBA to transfer technology or surplus personal property to small business concerns located in disaster areas. In order to implement the changes made by section 2105 of the RISE After Disaster Act, SBA is proposing to amend § 124.405 and add a new subpart 129 to title 13 of the Code of Federal Regulations.

Section 2105 of the RISE After Disaster Act, codified in the Small Business Act at 15 U.S.C. 636(j)(13)(F)(ii), provides that SBA may transfer technology or surplus personal property to a small business concern located in a disaster area if the small business meets the requirements for such a transfer, without regard to whether that small business is a participant in the 8(a) BD program. If the concern is an 8(a) BD program Participant, the concern it should not have received surplus personal property based on its status as an 8(a) BD program Participant on or after the date of the disaster declaration. Section 2105 provides that the requirements for transferring surplus personal property to a small business concern located in a disaster area shall generally be the same as those applicable to transfers to 8(a) BD program Participants. Section 2105 provides that a small business that receives surplus personal property as a small business concern located in a disaster area shall not subsequently receive surplus personal property as an 8(a) BD program Participant during the 2-year period beginning on the date on which the President declared the major disaster. A small business concern eligible for surplus personal property under a presidentially declared disaster may also be eligible for surplus personal property for a 2-year period under a subsequent presidentially declared disaster.

In order to implement the changes made by section 2105, SBA proposes to amend § 124.405 by updating the statutory reference contained in paragraph (a) and by adding a new paragraph (b)(6) to provide that 8(a) BD program Participants are not eligible to receive surplus personal property under § 124.405 if they have received surplus personal property under proposed subpart A as a small business concern located in a disaster area during the 2-year period beginning on the date on which the President declared the applicable major disaster.

In addition to the changes necessitated by section 2105, SBA is also proposing several other changes to § 124.405.

SBA is proposing to change the cross citation for the GSA and SASP procedures in § 124.405(a)(1). The change is needed to update the cross reference because it has changed since publication. SBA is proposing to change the language in paragraph (a)(2) to remove the term “donable” and in its place provide a more descriptive language, because “donable” is not a defined term in GSA’s surplus personal property regulations.

SBA is proposing to amend § 124.405(b)(3) to add a reference to the nonprocurement debarment regulations contained in Title 2 of the Code of Federal Regulations.

SBA is proposing to amend § 124.405(c)(1) to provide clarity on how the Program has been historically administered. Specifically, the current regulations states that “Participants may acquire surplus Federal Property located in any state.” That statement is true but could be misleading as to an individual participant. The language was intended to convey that Participants throughout the country could take part, not that a Participant could acquire surplus personal property from any State at any time. Currently, a Participant may only acquire surplus personal property from the SASP in the state(s) where the Participant currently operates. This is not a new policy and has been clearly established by SBA’s agreements with the SASPs. The new proposed language more clearly articulates the current policy and SBA believes will lead to less confusion now that there are additional programs.

SBA is proposing to amend § 124.405(d) to update the cross references to GSA’s regulations.

SBA is proposing to amend § 124.405(f) to alter the method for transferring title. Currently title transfers to the participant when the agreement between the participant and the SASP is executed. SBA is proposing to change this to the participant being given conditional title to the surplus personal property pending the terms of the agreement being executed and the

firm meeting all the additional requirements of this part. This change will align the 8(a) BD program participant title terms with the other programs SBA is implementing with this proposed rule, and with the general practice of GSA and the SASP with treatment of title with regard to other donees. SBA believes that aligning all these programs with similar title rules will simplify the process for all the parties involved.

As noted above SBA is proposing to add a new subpart A to 13 CFR part 129 to incorporate the provisions of section 2105. Part 129, Contracts for Small Businesses Located in Disaster Areas, was recently added by SBA Final Rule: National Defense Authorization Acts of 2016 and 2017, Recovery Improvements for Small Entities After Disaster Act of 2015, and Other Small Business Government Contracting, 84 FR 65647 (Nov. 29, 2019). This proposed subpart to part 129 addresses how a small business concern located in a disaster area would be able to obtain surplus personal property. SBA is proposing to add § 129.200 which will have one definition for this subpart. It is a definition for “covered period”. This term is incorporated into SBA regulations as defined in the Small Business Act at 15 U.S.C. 636(j)(f)(13)(F)(ii)(I)(aa).

SBA is also proposing to add § 129.201 to implement the program for transfer of surplus personal property. The provisions of proposed § 129.201 are based on SBA’s proposed regulations governing the transfer of surplus personal property to veteran-owned small business concerns addressed above and under the 8(a) BD program regulations, contained in 13 CFR 124.405.

#### John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA)

Section 861 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA), Public Law No: 115-232 (8/13/18) codified in the Small Business Act at 15 U.S.C. 636(j)(13)(F)(iii), provides that SBA may transfer technology or surplus personal

property to a small business concern located in Puerto Rico if the small business meets the requirements for such a transfer, without regard to whether that small business is a participant in the 8(a) BD program. SBA is proposing to add a subpart B to part 129 to incorporate these changes.

SBA is proposing to add a new § 129.300. This section will have two definitions. The first definition is an incorporation of “covered period”, a defined term in the Small Business Act. Specifically, SBA is proposing to incorporate the term “covered period” as defined at 15 U.S.C. 636(j)(13)(F)(iii)(I). SBA is proposing to adopt the statutory language as is without modification. It should be noted that this definition for covered period is different than the definition in proposed § 129.200. The two terms are defined separately in the Small Business Act and therefore SBA is proposing to adopt the language from the Act, as is, for each program. While it may be confusing to have two definitions of the same term for similar programs, it would not be proper for SBA to modify the clearly defined terms of the Small Business Act.

The second definition is for the term, “*located in Puerto Rico.*” The Small Business Act directs that SBA may transfer technology or surplus personal property to a “Puerto Rico business”, but does not define what a Puerto Rico business is. SBA has proposed that to be eligible for a transfer a concern should be a small business and should be located in Puerto Rico. Therefore, SBA has proposed that in order to be considered located in Puerto Rico a firm should have a physical location in Puerto Rico and be organized under the laws of Puerto Rico. SBA believes that this requirement provides clear guidance for which firms are eligible.

SBA is also proposing to add § 129.301 to implement the program for transfer of surplus personal property. The provisions of proposed § 129.301 are based on SBA’s proposed regulations governing the transfer of surplus personal property to veteran-owned small business

concerns addressed above and under the 8(a) BD program regulations, contained in 13 CFR 124.405.

Compliance with Executive Orders 12866, 13563, 12988, 13132, 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a “significant” regulatory action for purposes of Executive Order 12866. This is not a major rule under the Congressional Review Act, 5 U.S.C. 801, et. seq.

#### Executive Order 13563

This executive order directs agencies to, among other things: (a) afford the public a meaningful opportunity to comment through the Internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an “open exchange” of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System – Next Generation, System for Award Management and Electronic Subcontracting Reporting System.

2. Public participation: Did the agency: (a) afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an “open exchange” of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on Regulations.gov; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?

The proposed rule will have a 60 day comment period and will be posted on [www.regulations.gov](http://www.regulations.gov) to allow the public to comment meaningfully on its provisions. In addition, the proposed rule was discussed with GSA, the Department of Veterans Affairs and with representatives of the National Association of State Agencies for Surplus Property.

3. Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?

Yes, the proposed rule implements statutory provisions and will provide clarification to rules that were requested by agencies and stakeholders. In addition, SBA is proposing changes that will allow potential small business participants to participate in the GSA Program in as similar a manner as other participants do without additional regulatory requirements.

#### Executive Order 12988

This action meets applicable standards set forth set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have any retroactive or preemptive effect.

#### Executive Order 13132

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government

and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would implement new policies allowing more small businesses to participate in the GSA Program administered by the SASPs. SBA has analyzed this proposed rule and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. We note that this rule would impose a reporting requirement specific to state agencies that participate in the Program to provide federal technology or surplus personal property to small business concerns located in disaster areas, designated as veteran-owned small businesses, and in Puerto Rico. However, given the potential for application and annual reporting burdens on the States and Territories, particularly Puerto Rico, SBA does solicit comments on the issue of whether this rule has implications for federalism.

#### Executive Order 13771

This proposed rule is expected not to be subject to Executive Order 13771 because the proposed rule is a transfer rule. The benefits to small businesses in disaster areas, veteran-owned small businesses, and small business concerns located in Puerto Rico produced by this rule are a transfer of benefits from other entities who may have received the surplus personal property in their place.

#### Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purposes of the Paperwork Reduction Act, SBA has determined that this proposed rule would not impose new government-wide reporting requirements on small business concerns. SBA and GSA have discussed the possible implication of the new regulations, and do not believe that any new requirements are being added to GSA's Programs in a addition to the requirements already in place for recipients of surplus personal property. GSA has specific forms for its

Surplus Property Program, but these proposed amendments will require no changes to those forms. See Standard Form 123, Transfer Order Surplus Personal Property, OMB Control Number 3090-0014 (expires 3/31/22). SBA welcomes comments on whether the proposed regulations would affect the already approved collections.

However, this rule would does have a reporting requirement specific to state agencies that participate in the Program to provide federal technology or surplus personal property to small business concerns located in disaster areas, designated as veteran-owned small businesses, and in Puerto Rico. GSA already has a specific form to collect data from SASPs with regard to the surplus personal property donation Program. See GSA Form 3040, State Agency Monthly Donation Report of Surplus Property, OMB Control Number 3090-0112 (expires 3/31/2022).

Concerning the verification of veteran-owned small businesses, the Department of Veteran Affairs already has the authority to verify qualified small business concerns. 38 CFR part 74. The Department of Veterans Affairs is responsible to update its public database accordingly. <https://www.va.gov/osdbu/verification/>. SASPs will rely on the accurately updated information to make decisions. Concerning the designation of a “disaster area” the term is defined in the RISE Act as area for which the President has declared a major disaster during the covered period; namely, the 2-year period beginning on the date of the declaration of the applicable major disaster.

SBA invites public comments on the proposed changes to the regulations requiring reporting from SASPs to the Federal Government. Comments must be received by the deadline stated in the DATES section of this rule. Refer to the ADDRESS section for instructions on how and where to submit.

Regulatory Flexibility Act, 5 U.S.C. 601-612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must “prepare and make available for public comment an initial regulatory analysis” which will “describe the impact of the proposed rule on small entities.” Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Although the rulemaking will impact all veteran-owned small businesses and small business concerns in disaster areas and Puerto Rico, SBA does not believe the impact will be significant. After discussions with GSA, SBA believes that the proposed regulation will have an impact on a substantial number of entities, but that it will not have a significant economic impact. SBA reached this conclusion because the overall amount of donated personal property will not change. The proposed regulation will be implementing statutory changes with regard to the mix of how that property is distributed among the various eligible entities, but neither GSA or SBA believe that the overall impact on all relevant parties will be significant given that the regulation is not changing the total value of personal property distributed.

The Federal Surplus Personal Property Donation Program enables certain nonfederal organizations to obtain personal property that the federal government no longer needs. SASPs maintain the list of eligible organizations and these generally include: public agencies, nonprofit educational and public health agencies, nonprofit and public programs for the elderly, public airports, and educational agencies of special interest to the Armed Services. More information on the list of eligible entities can be found at <http://www.nasasp.org/findmystate.html>. In fiscal year 2018 GSA donated through this program personal property with original acquisition value of \$418,158,102. It should be noted that this reflects the value of the property when it was acquired, not when it was donated. SBA does not have accurate data to reflect the value at time of

donation, but does believe the value would be significantly less than the value at which the property was acquired.

As noted above this proposed regulation will have an effect on a substantial number of entities. First, it will have an impact on all the entities currently entitled to receive surplus property. SBA does not have a number for all those entities, but that number does include approximately 4,400 participants in SBA's 8(a) BD program. In addition to the entities already eligible for GSA's Program, these proposed regulations will also have an impact on new entities that will be allowed to take part once these regulations go into effect. As of December 9, 2019, the Department of Veteran Affairs has a total of 13,853 verified service-disabled-veteran owned small businesses and veteran-owned small businesses. Those businesses would be eligible to participate in GSA's Program under the proposed regulations. Further, as of November 2019, SBA used data from the federal procurement data system to identify approximately 3,400 small firms in Puerto Rico that are currently engaged in business with the federal government. Finally, according to the 2012 economic census there are approximately 7.7 million small businesses in the United States with employees. Under the proposed regulations any small business located in a major disaster area may be eligible for the Program. Under this proposed regulation it is possible that any small business in the United States could potentially be a participant, because a major disaster could happen anywhere and at any time. This is a variable that cannot be known with certainty at this time. Therefore, SBA is operating under the assumption that all small businesses could be affected at some point in the future.

The provisions of this proposed regulation are implementing three distinct and new statutory provisions enacted by Congress and detailed above. Therefore, it is necessary for SBA to take some action in order to implement the new statutory requirements. SBA in conjunction

with GSA has reviewed possible alternatives to this proposed regulation. One alternative discussed was for SBA and GSA to enter into one or several memorandums of understanding with regard to additional potential program participants. As noted above, participants in SBA's 8(a) BD program are currently able to participate in GSA's Program. Participation in the GSA Program by 8(a) BD participants is governed by both regulations issued by SBA and memorandums of understanding entered into by SBA, GSA, and the various SASPs. In implementing the new statutory provisions SBA believes that following the previous example of the 8(a) BD program is the best course of action and has therefore chosen to implement the statutes by regulation. Going through the formal regulation process allows SBA to craft the rules for the programs with direct input from the public, and to have a place within SBA's regulations that interested parties may go to review the requirements of the various programs. While SBA believes that the formal rule making process is the best alternative for implementation, SBA is still open to comments on the issue. If any possible impacted parties would like to provide comments on either the considered alternative or another alternative that SBA has not considered, please follow the instructions above to do so.

SBA is also aware that the statutes implementing these programs and other programs for distribution of surplus personal property do not use the same language. SBA does not think that this proposed regulation, or the various statutes conflict with each other. SBA believes that these proposed regulations will help provide clarity around any issues or differences between the various statutes. That said, SBA welcomes comments from any impacted parties about whether the proposed regulations as written conflict with other statutes or regulations.

There are no new compliance or other costs imposed by the proposed rule on small business concerns. The proposed rule expands the access to GSA's Program on to more small

business concerns under varying circumstances, without significant costs. The benefits to small businesses in disaster areas, veteran-owned small businesses, and small business concerns located in Puerto Rico produced by this rule are a transfer of benefits from other entities who may have received the surplus personal property in their place. The firms must adhere to certain regulations regarding certification or status relevant to designation as a small business concern.

For the reasons discussed, SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small business concerns.

### **List of Subjects**

#### **13 CFR Part 124**

Administrative practice and procedure, Government procurement, Hawaiian natives, Indians-business and finance, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

#### **13 CFR Part 125**

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small business, Technical assistance, Veterans.

#### **13 CFR Part 129**

Administrative practice and procedure, Government contracts, Government procurement, Government property, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 124, 125, and 129 as follows:

### **PART 124 – 8(a) BUSINESS DEVELOPMENT/ SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS**

1. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99-661, Pub. L. 100-656, sec. 1207, Pub. L. 101-37, Pub. L. 101-574, section 8021, Pub. L. 108-87, and 42 U.S.C. 9815.

2. Amend § 124.405 by:
  - a. Revising the second sentence of paragraph (a)(1) and paragraph (a)(2);
  - b. Revising paragraph (b)(3);
  - c. Adding paragraph (b)(6);
  - d. Revising the heading of paragraph (c) and paragraph (c)(1) introductory text;
  - e. Revising the heading of paragraph (d) and paragraph (d)(1); and
  - f. Revising paragraph (f).

The revisions and addition read as follows:

**§124.405 How does a Participant obtain Federal Government surplus property?**

(a) \*\*\*

(1) \* \* \* The procedures set forth in 41 CFR part 102-37 and this section will be used to transfer surplus personal property to eligible Participants.

(2) The surplus personal property which may be transferred to SASPs for further transfer to eligible Participants includes all personal property which has become available for donation pursuant to 41 CFR 102-37.30.

(b)\*\*\*

(3) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations;

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(6) Not have received property under part 129 subpart B of this chapter, during the applicable period described in that subpart.

(c) *Use of acquired surplus personal property.* (1) Eligible Participants may acquire Federal surplus personal property from the SASP in the State(s) where the Participant is located and operates, provided the Participant represents in writing:

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(d) *Procedures for acquiring Federal Government surplus personal property.* (1) Participants may participate in the GSA Federal Surplus Personal Property Donation Program administered by the SASPs. See generally 41 CFR 102-37 and/or § 102-37.125.

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(f) *Title.* Upon execution of the SASP distribution document, the Participant has conditional title only to the surplus personal property during the applicable period of restriction. Full title to the surplus personal property will vest in the donee only after the donee has met all of the requirements of this part.

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## **PART 125 – GOVERNMENT CONTRACTING PROGRAMS**

3. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657b, 657(f), and 657r.

4. Add subpart F to read as follows:

### **Subpart F -- Surplus Personal Property for Veteran Owned Small Business Programs**

**§ 125.100. How does a small business concern owned and controlled by veterans, obtain Federal Surplus personal property?**

(a) *General.* (1) Pursuant to 15 U.S.C. 657b(g), eligible small business concerns owned and controlled by veterans may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102-37 and this section will be used to transfer surplus personal property to such concerns.

(2) The surplus personal property which may be transferred to SASPs for further transfer to eligible small business concerns owned and controlled by veterans includes all surplus personal property which has become available for donation pursuant to 41 CFR 102-37.30.

(b) *Eligibility to receive Federal surplus personal property.* To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be a small business concern owned and controlled by veterans, that has been verified by the Secretary of Veterans Affairs under section 8127 of title 38, United States Code;

(2) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire Federal surplus personal property from the SASP in the State(s) where the concern located and operates, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the surplus personal property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the surplus personal property to be acquired to any party other than the Federal Government as required by GSA and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the surplus personal property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the surplus personal property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA and SASP access to inspect the surplus personal property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property, and all costs associated with the use and maintenance of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP may be required to pay a service fee to the SASP in accordance with 41 CFR 102-37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(e) *Title.* Upon execution of the SASP distribution document, the firm receiving the property has only conditional title to the property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part and the requirements of GSA and the SASP that it received the property from.

**PART 129 – CONTRACTS FOR SMALL BUSINESSES LOCATED IN  
DISASTER AREAS, AND SURPLUS PERSONAL PROPERTY FOR SMALL  
BUSINESSES LOCATED IN DISASTER AREAS AND PUERTO RICO**

5. The authority citation for part 129 is revised to read as follows:

Authority: 15 U.S.C. 636(j)(13)(F)(ii), (iii), and 644(f).

6. The heading of part 129 is revised to read as set forth above.

7. Redesignate §§ 129.200, 129.300, 129.400, and 129.500, as 129.101, 129.102, 129.103, and 129.104, respectively;

8. Redesignate § 129.100 and newly redesignated §§ 129.101, 129.102, 129.103, and 129.104 as subpart A;

9. Add subpart A heading and subparts B and C to read as follows:

**Subpart A- Contracts for Small Businesses Located in Disaster Areas**

**Subpart B -- Surplus Personal Property for Small Businesses Located in Disaster Areas**

Sec.

129.200 What definitions are important in this subpart?

129.201 How does a small business concern located in a disaster area obtain Federal surplus personal property?

**Subpart C - Surplus Personal Property for Small Businesses Located in Puerto Rico**

Sec.

129.300 What definitions are important in this subpart?

129.301 How does a small business concern located in a Puerto Rico obtain Federal surplus personal property?

**Subpart B -- Surplus Personal Property for Small Businesses Located in Disaster Areas**

**§ 129.200 What definitions are important in this subpart?**

*Covered period* means the 2-year period beginning on the date on which the President declared the applicable major disaster.

**§ 129.201 How does a small business concern located in a disaster area obtain Federal surplus personal property?**

(a) *General.* Pursuant to 15 U.S.C. 636(j)(13)(F)(ii) eligible small business concerns located in disaster areas may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102-37 and this section will be used to transfer surplus personal property to eligible small business concerns.

(2) The property which may be transferred to SASPs for further transfer to eligible small business concerns includes all personal property which has become available for donation pursuant to 41 CFR 102-37.30.

(b) *Eligibility to receive Federal surplus personal property.* To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be located in a disaster area and certify that it qualifies as a small business under its primary NAICS code;

(2) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it; and

(4) Not have received a transfer of property under § 124.405 of this chapter during the covered period. The 2-year period of the presidentially declared disaster does not affect eligibility for additional technology transfers or surplus personal property to a small business

concern located in a disaster area for a subsequent presidentially declared disaster occurring within the original 2-year period of a prior presidentially declared disaster.

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire surplus Federal personal property from the SASP in the State(s) where the concern is located and operates, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government as required by GSA and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA and SASP access to inspect the property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP must pay a service fee to the SASP in accordance with 41 CFR 102-37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(e) *Title*. Upon execution of the SASP distribution document, the firm receiving the surplus personal property has only conditional title only to the surplus personal property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part and the requirements of GSA and the SASP that it received the property from.

### **Subpart C - Surplus Personal Property for Small Businesses Located in Puerto Rico**

#### **§ 129.300 What definitions are important in this subpart?**

*Covered period* means the period beginning on August 13, 2018 and ending on the date which the Oversight Board established under section 101 of the Puerto Rico Oversight, Management, and Economic Stability Act (48 U.S.C. 2121) terminates.

*Located in Puerto Rico* means a concern with a physical location in Puerto Rico and organized under the laws of Puerto Rico.

#### **§ 129.301 How does a small business concern located in a Puerto Rico obtain Federal surplus personal property?**

(a) General. Pursuant to 15 U.S.C. 636(j)(13)(F)(iii) eligible small business concerns located in Puerto Rico may receive surplus Federal Government property from the Puerto Rico State Agency for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102-37 and this section will be used to transfer surplus personal property to eligible small business concerns.

(2) The property which may be transferred to SASPs for further transfer to eligible small business concerns includes all personal property which has become available for donation pursuant to 41 CFR 102-37.30.

(b) *Eligibility to receive Federal surplus personal property*. To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be *located in Puerto Rico* and certify that it qualifies as a small business under its primary NAICS code;

(2) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it; and

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire surplus Federal personal property from the Puerto Rico SASP, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government as required by GSA and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA, and SASPS access to inspect the property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP must pay a service fee to the SASP in accordance with 41 CFR 102-37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(f) *Title.* Upon execution of the SASP distribution document, the firm receiving the surplus personal property has only conditional title to the surplus personal property during the applicable period of restriction. Full title to the surplus personal property will vest in the donee only after the donee has met all of the requirements of this part.

Dated: January 7, 2020.

Christopher M. Pilkerton  
Acting Administrator

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