



Billing Code: 8026-03

## **SMALL BUSINESS ADMINISTRATION**

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

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

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

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) is amending its regulations to expand access to the U.S. General Services Administration's (GSA) Federal Surplus Personal Property Donation Program for certain small business concerns 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). These Acts 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 enacting certain procedures for determining which firms may participate in GSA's existing surplus personal property program, and under what conditions.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Donna Fudge, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416.

## **SUPPLEMENTARY INFORMATION:**

### General Background

On January 21, 2020, SBA issued a proposed rule to implement three new statutory programs regarding the transfer of surplus personal property to certain small businesses. 85 FR 3273. As noted in SBA's proposed rule, GSA operates the Federal Surplus Personal Property Donation Program (Donation Program) under the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and other applicable laws. *See* 41 CFR part 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 Donation 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/>.

SBA received 32 comments. Of those 32 comments, 30 were supportive. SBA received several unsupportive comments that requested SBA not adopt clear statutory requirements. SBA has noted these comments and has provided a more thorough response to each of those comments below.

### The Veterans Small Business Enhancement Act

The Veterans Small Business Enhancement Act, Pub. L. 115-416 (January 2, 2019), codified in the Small Business Act at 15 U.S.C 657b(g), provides that veteran-owned small businesses should have access to surplus government personal property. SBA is adding a new subpart F, containing § 125.100, to 13 CFR part 125 to implement these changes.

SBA is adding this subpart to detail the new statutory authority. As noted in SBA's proposed rule, GSA and the State Agencies for Surplus Property (SASPs) already maintain a compliance and oversight role with regard 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 Donation Program.

The language added in § 125.100(a) references the regulations that govern the GSA Donation Program, and the requirements that concerns will need to meet to use the Donation Program. There were no comments on this paragraph and language is being adopted as proposed.

SBA received three comments on the proposed language for § 125.100(b)(1). For this section, SBA proposed language to incorporate the requirement that a concern will need to be verified by the Department of Veterans Affairs (VA) as a small business owned and controlled by veterans in order to be eligible for the Donation Program. One commenter agreed with SBA's proposed regulation. Two commenters requested that SBA remove the requirement regarding verification by the VA. The commenters requested that SBA drop this requirement because they believed it creates an obstacle to participation that could limit the number of small businesses that use the Donation Program. As noted in the proposed rule, the requirement that participants be verified by the VA comes directly from the Small Business Act and is a statutory requirement. The statutory language states that access to the Donation Program is available only to "to small business concerns owned and controlled by veterans (as verified by the Secretary of Veterans Affairs under section 8127 of title 38, United States Code)". 15 U.S.C.

657b(g)(2). SBA does not have the authority to disregard clear statutory language when promulgating regulations and program requirements, and therefore, SBA will not be removing this requirement.

SBA is adding § 125.100(c) to provide the requirements for the use of surplus personal property received, and the repercussions for misusing 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 the use, maintenance, and retention of surplus personal property. SBA received one comment on the proposed language. This comment requested that the final rule provide more specificity and detail regarding appropriate use of received property. SBA has reviewed the language of the proposed regulation. The proposed language made clear that the property needed to be used for normal business purposes of the business acquiring the property. The rule as proposed did not allow for the personal use of the property or the transfer of the property to other businesses. In addition, the proposed language is similar to language currently used for SBA's 8(a) Business Development (BD) program. 13 C.F.R §124.405(c). As such, SBA is not making any changes and is adopting the language as proposed.

This commenter also raised concerns about the proposed language concerning the return of surplus property. SBA has consulted with GSA about this comment and believes that the proposed language is consistent with Federal Management Regulations on the issue. As such, SBA does not believe that the proposed language puts potential recipients or SASPs in a position substantially different than other potential donees. Given these factors, SBA has decided to adopt the language as proposed.

SBA is adding § 125.100(d) to provide notice that there are costs associated with receiving the surplus personal property. These costs will be calculated by the individual SASP pursuant to 41 CFR part 102-37, Appendix B(e), and the SASP's State Plan of Operation. Veteran-owned small business concerns will be treated similarly to other recipients. SBA did not receive any comments on this provision and adopts it as proposed.

SBA proposed to add § 125.100(e) to provide notice of the type of title that veteran-owned small business concerns will receive. Firms will be receiving conditional title, and full title will transfer when they have met all the requirements of GSA and the SASP. As noted earlier, this procedure will have veteran-owned small business concerns treated in a similar manner to other recipients of surplus personal property through GSA's Donation Program. SBA received one comment on this specific issue. The commenter asked whether veteran-owned companies would have the same retention requirements as other donees. As noted in the proposed rule, SBA intends that veteran-owned businesses be treated in the same manner as other donees. SBA believes the current language will result in veteran-owned businesses having similar retention requirements to other donees, and addresses the commenter's concern about veteran-owned businesses potentially being treated differently. SBA is adopting the language as proposed.

#### 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, SBA is amending § 124.405 and part 129 of its regulations.

*Amendments to part 124.405*

SBA is amending § 124.405 to update the statutory reference contained in paragraph (a)(1). There were no comments and SBA is adopting the proposed language as is.

SBA is also 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 subpart A to part 129 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. SBA did not receive any comments on this change and adopts the rule as proposed.

In addition to the changes necessitated by section 2105, SBA is making several other changes to § 124.405. SBA is changing the cross citation for the GSA and SASP procedures in § 124.405(a)(1). SBA is also changing the language in paragraph (a)(2) of this section to remove the term “donable” and in its place provide more descriptive language, because “donable” is not a defined term in GSA’s surplus personal property regulations. SBA did not receive any comments on these changes and adopts the rule as proposed.

SBA is amending § 124.405(b)(3) to add a reference to the nonprocurement debarment regulations contained in title 2 of the Code of Federal Regulations. SBA did not receive any comments on this change and adopts the rule as proposed.

SBA is amending § 124.405(c)(1) to provide clarity on how the program has been historically administered. The new language more clearly articulates the current policy and SBA believes it will lead to less confusion now that there are additional programs. SBA did not receive any comments on this change and adopts the rule as proposed.

SBA is amending § 124.405(d)(1) to update the cross references to GSA's regulations. SBA did not receive any comments on this change and adopts the rule as proposed.

SBA is amending § 124.405(f) to alter the method for transferring title. As noted in the proposed rule, this change will align the 8(a) BD program participant title terms with the other programs SBA is implementing, and with the general practice of GSA and the SASP, with regard to other donees. SBA did not receive any comments on this change and adopts the rule as proposed.

#### *Amendments to part 129*

Via the 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”, SBA added part 129, Contracts For Small Businesses Located In Disaster Areas, to its regulations. 84 FR 65647 (November 29, 2019). To implement section 2105 of the RISE After Disaster Act, SBA is now creating two subparts for part 129: subpart A, titled, “Contracts For Small Businesses Located In Disaster Areas”, and subpart B, titled, “Surplus Personal Property for Small Businesses Located in Disaster Areas”. The new subpart A will contain the existing regulations in part 129. The new subpart B will address how a small business concern located in a disaster area can obtain surplus personal property and will contain two sections,

§§129.200 and 129.201. There were no comments regarding moving the noted regulations to the new subpart B. SBA is adding § 129.200, containing a definition for “covered period”. This term is being 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 did not receive any comments on this change and adopts the regulation as proposed.

SBA is adding § 129.201 to implement the program for transfer of surplus personal property. SBA received one comment regarding the certification/verification of small firms. This commenter noted that 8(a) firms and veteran-owned firms are certified by Government agencies and there is a method for verifying firms. The question raised was how a SASP should verify that a firm is small. In response to this comment, SBA is adding a requirement in § 129.201(b)(2) that any firm seeking to receive property through this program is required to register in SAM.gov, or a successor system, and officially certify its status as a small business under the size standard corresponding to its primary NAICS code. In addition, SASPs and GSA may rely on these certifications. SBA also added similar language to § 129.301(b) for consistency.

SBA received two comments on § 129.201(c), which requires that firms should only receive property in states the business are located. One commenter did not think limiting available surplus property to only businesses located in the state of the emergency was reasonable and did not account for businesses that may want to move into the area after a disaster. The other commenter agreed with the rule as written and thought it would be difficult for SASP to oversee and monitor property transferred out of their state. SBA believes the intent of the statute was to assist businesses located in a disaster area. Also, SBA believes that the suggested change by the commenter, while not being in

line with the intent of the statute, would also lead to more burdens on small businesses and SASPs that would need to keep track and report on equipment moving out of the state. As such, SBA adopts the rule as proposed.

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), 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. 15 U.S.C. 636(j)(13)(F)(iii); Pub. L. 115-232 (August 13, 2018). SBA is adding a new subpart C, titled, “Surplus Personal Property for Small Businesses Located in Puerto Rico”, to part 129 to incorporate these changes. The new subpart will include two sections, §§ 129.300 and 301.

SBA is adding two new definitions via the new § 129.300. Specifically, SBA will incorporate the term “covered period” as defined at 15 U.S.C. 636(j)(13)(F)(iii)(I). SBA noted in the proposed rule, and is reiterating here, that this definition for “covered period” is different than the definition used in the new § 129.200. The two terms are defined separately in the Small Business Act, and therefore SBA is adopting the language from the Act, as is, for each program. SBA did not receive any comments on this definition and adopts the regulation as proposed. The new § 129.300 also provides a definition for the term, “located in Puerto Rico”. SBA did not receive any comments on this definition and adopts the regulation as proposed.

SBA is adding § 129.301 to implement the program for transfer of surplus personal property for small business concerns located in Puerto Rico. SBA did not

receive any comments on this section. However, SBA also made changes to § 129.301(b) requiring firms to register in SAM.gov, and allowing for SASPs and GSA to rely on those certifications. SBA made the change in response to a comment on another section referenced above. SBA is adopting the rest of the section without any additional changes.

**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 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.

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

Second, the proposed rule provided a 60-day comment period and was posted on [www.regulations.gov](http://www.regulations.gov) (Docket ID: SBA-2020-0002) to allow the public to comment meaningfully on its provisions. In addition, the rule was discussed with GSA, the VA and with representatives of the National Association of State Agencies for Surplus Property.

Third, the final rule implements statutory provisions and provides clarification requested by agencies and stakeholders. In addition, the amendments made via this rule 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 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 rule would implement new policies allowing more small businesses to participate in the GSA Program administered by the SASPs. SBA has determined that this rule 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 and in Puerto Rico, as well as those designated as veteran-owned small businesses. However, given the potential for application and annual reporting burdens on the States and Territories, particularly Puerto Rico, SBA solicited comments on the issue of whether this rule has implications for federalism. SBA did receive a comment from a State Agency for Surplus Property and one from the National Association of State Agencies for Surplus Property. Both comments raised issues with details of the language of the regulations, but neither comment raised the issue of federalism.

#### Executive Order 13771

This final rule is not expected to be subject to Executive Order 13771 because the 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 rule will 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 Surplus Property Donation Program in addition to the requirements already in place for recipients of surplus personal property. GSA has specific forms for its Surplus Property Donation Program, but these proposed amendments will require no changes to those forms. *See*

Standard Form 123, Transfer Order - Surplus Personal Property and Continuation Sheet, OMB Control Number 3090-0014 (expires March 31, 2022).

However, this rule 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, or located in Puerto Rico. GSA already has a specific form to collect data from SASPs with regard to the Surplus Property Donation Program. *See* GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, OMB Control Number 3090-0112 (expires March 31, 2022).

Concerning the verification of veteran-owned small businesses, the VA already has the authority to verify qualified small business concerns. 38 CFR part 74. The VA is responsible for updating its public database of veteran-owned small businesses <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 invited public comments on the proposed changes to the regulations requiring reporting from SASPs to the Federal Government. SBA received general comments from SASPs regarding the regulations and possible burdens related to oversight, but not specifically about the collection of data.

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 a regulatory flexibility analysis to address the impact of the rule on small entities. However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the 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 rule 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 rule 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. SBA did not receive any comments on its analysis that there would not be significant economic impact.

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 final rule 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 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 VA 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 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 regulations any small business located in a major disaster area may be eligible for the Donation Program. Under these regulations 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 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 requested comments on the issue. SBA did not receive any comments on this issue.

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 regulation, or the various statutes conflict with each other. SBA believes that these regulations will help provide clarity around any issues or differences

between the various statutes. That said, SBA requested comments from any impacted parties about whether the regulations as written conflict with other statutes or regulations. SBA did not receive any comments on this issue.

There are no new compliance or other costs imposed by the rule on small business concerns. The rule expands the access to GSA's Program 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 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, Government property, Hawaiian Natives, Indians-business and finance, Minority businesses, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

#### 13 CFR Part 125

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

#### 13 CFR Part 129

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

Accordingly, for the reasons stated in the preamble, SBA amends 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);
  - b. Revising paragraphs (a)(2) and (b)(3);
  - c. Adding paragraph (b)(6);
  - d. Revising the paragraph (c) subject heading and paragraph (c)(1) introductory text;
  - e. Revising the paragraph (d) subject heading 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 section.

(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 part 102-37 and/or § 102-37.125 of that title.

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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 is revised 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, consisting of § 125.100, 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 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 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 the 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), 644(f).

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

**§§ 129.200, 129.300, 129.400, and 129.500 [Resdesignated as §§ 129.101, 129.102,  
129.103, and 129.104]**

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

### **Subpart A — Contracts for Small Businesses Located in Disaster Areas**

8. Designate §129.100 and newly redesignated §§ 129.101, 129.102, 129.103, and 129.104 as subpart A under the heading set forth above.

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

### **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**

**Rico**

129.300 What definitions are important in this subpart?

129.301 How does a small business concern located in 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. 15 U.S.C. 636(j)(f)(13)(F)(ii)(I)(aa).

#### **§ 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.

(1) 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;

(2) Qualify as small under the size standard corresponding to its primary NAICS code and certify its size in SAM.gov, or a successor system, prior to seeking access to surplus property. SASPs and GSA may rely on a concern's certification as small for purposes of this program;

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

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

(5) 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 the 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. 15 U.S.C. 636(j)(13)(F)(iii).

*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 (SASP). 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. The property which may be transferred to the Puerto Rico SASP 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;

(2) Qualify as small under the size standard corresponding to its primary NAICS code and certify its size in SAM.gov, or a successor system, prior to seeking access to surplus property. SASPs and GSA may rely on concern's certification as small for purposes of this program;

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

(4) 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 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 the 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.

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