



GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 552

[GSAR Case 2022-G505; Docket No. 2023-0020; Sequence No. 1]

RIN: 3090-AK56

**General Services Administration Acquisition Regulation;
Reformatting Clause for Direct 8(a) Contracting**

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to revise the formatting for a contact clause included in solicitations, contracts, and orders issued under GSA's 8(a) Partnership Agreement with the Small Business Administration.

DATES: This final rule is effective on **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Clarence Harrison Jr, GSA Acquisition Policy Division, at gsarpolicy@gsa.gov or 202-227-7051. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite GSAR Case 2022-G505.

SUPPLEMENTARY INFORMATION:

I. Background

On June 23, 2022, GSA, and the Small Business Administration (SBA) signed a revised 8(a) partnership agreement as part of an effort to bring new entrants into federal

contracting. Sections 7(j)(10) and 8(a) of the Small Business Act (the Act) (15 U.S.C. 636(j)(10) and 637(a)) authorize the U.S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development (8(a) BD) Program. GSA partners with SBA to promote appropriate utilization of 8(a) program participants. Once certified, participants are eligible to receive federal contracting preferences.

To ensure successful implementation of the 8(a) partnership agreement, GSA is taking the opportunity to update any inconsistent and unclear 8(a) policies. GSA is cleaning up confusing regulatory language for the use of clauses prescribed for solicitations, contracts, and orders issued under GSA's 8(a) Partnership Agreement. One of the paragraphs within GSAR 519.870-2 identifies instructions for modifying a FAR clause. In order to be more clear and consistent with the clause prescriptions, GSA is recognizing the FAR deviation through a new GSAR clause number rather than through buried instructions.

II. Publication of This Final Rule for Public Comment Is Not Required

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or

has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because while this rule relates to the expenditure of appropriated funds, it is not required to be published for public comment, because it does not have a significant effect or impose any new requirements on contractors or offerors.

This rule revises the formatting for an existing 8(a) Program contract clause identified in GSAR 519.870-2. The instructions for modifying FAR Clause 52.219-18 is currently buried within GSAR 519.870-2 and this final rule replaces and reformats the instructions in GSAR Clause 552.219-18. The text within GSAR Clause 552.219-18 is the same as previously provided through the modification instructions for FAR Clause 52.219-18.

The FAR clause deviation associated with this GSAR case is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

III. Executive Orders 12866, 13563, and 14904

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established

in E.O. 12866 and E.O. 13563. OIRA has determined this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a final rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule is not a major rule under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 519 and 552.

Government procurement.

Jeffrey A. Koses,

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Therefore, GSA amends 48 CFR parts 519 and 552 as set forth below:

1. The authority citation for 48 CFR parts 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 519 - SMALL BUSINESS PROGRAMS

2. Revise section 519.870-2 to read as follows:

519.870-2 Contract clauses.

(a) Insert the following clauses in solicitations, contracts, and orders in accordance with the provisions of Section 8(a) of the U.S. Small Business Administration Act as implemented by FAR subpart 19.8 and GSA's 8(a)

Partnership Agreement:

(1) 552.219-74, Section 8(a) Direct Award;

(2) FAR 52.219-14, Limitations on

Subcontracting; and

(3) FAR Deviation. 552.219-18, Notification of Competition Limited to Eligible 8(a) Participants. GSA has

a FAR Deviation that allows the use of clause 552.219-18 in lieu of the FAR clause at 52.219-18.

(b) Do not insert the following clauses in solicitations, contracts, and orders in accordance with the provisions of Section 8(a) of the U.S. Small Business Administration Act as implemented by FAR subpart 19.8 and GSA's 8(a) Partnership Agreement:

(1) FAR 52.219-11, Special 8(a) Contract Conditions;

(2) FAR 52.219-12, Special 8(a) Subcontract Conditions; and

(3) FAR 52.219-17, Section 8(a) Award.

PART 552 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 52.219-18 to read as follows:

552.219-18, Notification of Competition Limited to Eligible 8(a) Participants (DEVIATION FAR 52.219-18).

As prescribed in 519.870-2(a), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) PARTICIPANTS (DATE)

(DEVIATION FAR 52.219-18)

(a) Offers are solicited only from:

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

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

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

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

(3) A joint venture—

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

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

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

(b) By submission of its offer, the Offeror represents that it meets the applicable criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation. A Contracting Officer may

consider a joint venture for contract award. SBA does not approve joint ventures for competitive awards, but see 13 CFR 124.501(g) for SBA's determination of participant eligibility.

(d) The Contractor will notify the Contracting Officer in writing immediately upon entering any agreement (either oral or written) to transfer all or part of its stock.

(End of clause)

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