

federal register

**Thursday
January 23, 1992**

Part III

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Parts 19 and 52
Federal Acquisition Regulation; Small
Business Concern Representation;
Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 19 and 52**

[FAR Case 91-61]

**Federal Acquisition Regulation; Small
Business Concern Representation**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering revising FAR 19.502-4(b) and paragraphs (a) and (c) of 52.219-1 to clarify language regarding an offeror's size status and to remove the requirement for offerors to certify that all supplies to be furnished will be manufactured in the United States.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 23, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets NW., room 4041, Washington, DC 20405.

Please cite FAR case 91-61 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501-0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 91-61.

SUPPLEMENTARY INFORMATION:**A. Background**

The purpose of the Small Business Concern Representation at 52.219-1 is to determine if the offeror is a small business. Whether the firm is providing foreign supplies is not a factor in determining the size status of the firm.

Small business set-aside clauses will continue to require that manufacturers or dealers furnish only end items manufactured or produced inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. A sentence has been added to the provision to clarify that set-aside clauses of the solicitation contain restrictions on the source of end items to be furnished. FAR 19.502-4(b) is being amended to clarify that questions regarding the size status of an offeror are matters of eligibility, not responsiveness, and must be referred to the Small Business Administration.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will clarify language regarding an offeror's size status and removes the requirement for offerors to certify that all supplies to be furnished will be manufactured in the United States. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 91-61) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: January 13, 1992.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 19 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 19—SMALL BUSINESS AND
SMALL DISADVANTAGED BUSINESS
CONCERNS**

2. Section 19.502-4 is amended in paragraph (b) by adding a second sentence to read as follows:

**19.502-4 Methods of conducting set-
asides.**

(b) * * * However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see subpart 19.3).

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

3. Section 52.219-1 is amended by revising the date of the clause and paragraph (a); redesignating paragraphs (c)(1), (c)(2), and (c)(3) as (c)(2)(i), (c)(2)(ii), and (c)(2)(iii), and the introductory text of paragraph (c) as (c)(2), and adding a new paragraph (c)(1) to read as follows:

**52.219-1 Small Business Concern
Representation.**

* * * * *

**Small Business Concern Representation
(Date)**

(a) *Representation.* The offeror represents and certifies as part of its offer that it is: a small business concern, not a small business concern.

* * * * *

(c) *Notice.* (1) If this solicitation is for supplies and has been set-aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) * * *

(i) * * *

(ii) * * *

(iii) * * *

(End of provision)

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