

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 2**[FAC 2005–86; FAR Case 2015–019; Item
I; Docket 2015–0019, Sequence 1]

RIN 9000–AM96

**Federal Acquisition Regulation;
Definition of “Multiple-Award
Contract”****AGENCY:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Final rule.**SUMMARY:** DoD, GSA, and NASA are
issuing a final rule to amend the Federal
Acquisition Regulation (FAR) to define
“multiple-award contract.”**DATES:** *Effective:* February 1, 2016.**FOR FURTHER INFORMATION CONTACT:** Ms.
Mahruha Uddowla, Procurement
Analyst, at 703–605–2868, for
clarification of content. For information
pertaining to status or publication
schedules, contact the Regulatory
Secretariat Division at 202–501–4755.
Please cite FAC 2005–86, FAR Case
2015–019.**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 80 FR 31342 on June 2, 2015, soliciting public comments regarding the definition of the term “multiple-award contract.” The proposed rule was implementing the definition that the U.S. Small Business Administration (SBA) established at 13 CFR 125.1(k) in its final rule which published in the **Federal Register** at 78 FR 61114 on October 2, 2013. SBA’s final rule implemented several provisions of the Small Business Jobs Act of 2010, Pub. L. 111–240. Section 1311 of Pub. L. 111–240 (15 U.S.C. 632(v)) added a definition of “multiple-award contract.” One respondent submitted a comment on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comment in the development of the final rule. A discussion of the comment is provided as follows:

A. Summary of Significant Changes

There were no changes made to the rule as a result of the comment received. There were no comments on the Regulatory Flexibility Act analysis.

B. Analysis of Public Comments

Comment: One respondent stated that based on the proposed definition, any award made to multiple sources from one solicitation is a multiple award, even when the requirement is split between offerors and none of the subsequent task orders are competed because each offeror gets part of the overall requirement in the solicitation. The respondent requested that the FAR definition clarify that a multiple-award contract is one that should be subject to fair opportunity.

Response: FAR 16.505(b)(1) provides information concerning fair opportunity. Additional clarity is not needed for the definition of “multiple-award contract” concerning fair opportunity since it is already provided at FAR 16.505(b)(1).

III. Executive Orders 12866 and 13563

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. 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. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The final rule amends the FAR to define “multiple-award contract.” On October 2, 2013, the Small Business Administration (SBA) issued a final rule in the **Federal Register** at 78 FR 61114 to implement various sections of the Small Business Jobs Act of 2010 (Public L. 111–240) by establishing new policies and procedures for multiple-award contracts and task and delivery orders. SBA’s final rule included a definition of “multiple-award contract”. The final rule defines “multiple-award contract” in order to implement that part of SBA’s final rule in the FAR.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.

This rule applies to all entities that do business with the Federal Government, but it is not expected to have a significant impact.

This rule does not impose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. 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 Subject in 48 CFR Part 2

Government procurement.

Dated: December 17, 2015.

William F. Clark,*Director, Office of Government-wide
Acquisition Policy, Office of Acquisition
Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA
amend 48 CFR part 2 as set forth below:

**PART 2—DEFINITIONS OF WORDS
AND TERMS**

■ 1. The authority citation for 48 CFR
part 2 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C.
chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 2.101 in paragraph
(b)(2) by adding, in alphabetical order,
the definition “Multiple-award
contract” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Multiple-award contract means a
contract that is—

(1) A Multiple Award Schedule
contract issued by GSA (*e.g.*, GSA
Schedule Contract) or agencies granted
Multiple Award Schedule contract
authority by GSA (*e.g.*, Department of
Veterans Affairs) as described in FAR
part 38;

(2) A multiple-award task-order or
delivery-order contract issued in
accordance with FAR subpart 16.5,
including Governmentwide acquisition
contracts; or

(3) Any other indefinite-delivery,
indefinite-quantity contract entered into

with two or more sources pursuant to the same solicitation.

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[FR Doc. 2015-32427 Filed 12-30-15; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 18, 19, and 52

[FAC 2005-86; FAR Case 2015-032; Item II; Docket No. 2015-0032; Sequence No. 1]

RIN 9000-AN13

Federal Acquisition Regulation; Sole Source Contracts for Women-Owned Small Businesses

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) that provide for authority to award sole source contracts to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-Owned Small Business (WOSB) Program.

DATES: *Effective:* December 31, 2015.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before February 29, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005-86, FAR Case 2015-032, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-032." Select the link "Comment Now" that corresponds with "FAR Case 2015-032." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015-032" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers,

1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-86, FAR Case 2015-032, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruha Uddowla, Procurement Analyst, at 703-605-2868 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAC 2005-86, FAR Case 2015-032.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement regulatory changes that the SBA has made in its final rule published in the **Federal Register** at 80 FR 55019, on September 14, 2015, concerning sole source award authority under the WOSB Program. SBA's final rule implements the statutory requirements of paragraph (a)(3) of section 825 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Public Law 113-291, granting contracting officers the authority to award sole source contracts to both economically disadvantaged women-owned small business (EDWOSB) concerns and to WOSB concerns eligible under the WOSB Program.

The WOSB Program, as set forth in section 8(m) of the Small Business Act (15 U.S.C. 637(m)), authorizes contracting officers to restrict competition to EDWOSB concerns and to WOSB concerns eligible under the WOSB Program for Federal contracts, in certain industries that SBA has determined to be underrepresented or substantially underrepresented by small business concerns owned and controlled by women. DoD, GSA, and NASA published an interim rule for FAR Case 2010-015 in the **Federal Register** at 76 FR 18304, on April 1, 2011, providing guidance to contracting officers for the set-asides and implementing SBA's final rule, published in the **Federal Register** at 75 FR 62258, on October 7, 2010. The FAR rule was finalized with changes and

published in the **Federal Register** at 77 FR 12913, on March 2, 2012. The establishment of a set-aside mechanism exclusively for women-owned small businesses was the first step towards leveling the playing field among the socioeconomic programs covered by the Small Business Act, *i.e.*, the HUBZone, service-disabled veteran-owned small-business, 8(a), and WOSB programs.

The WOSB Program was subsequently amended in section 825 of the NDAA for FY2015, which granted contracting officers the authority to award sole source contracts to EDWOSB concerns and WOSB concerns eligible under the WOSB Program. SBA established procedures for this new statutory authority in its final rule published in the **Federal Register** at 80 FR 55019, on September 14, 2015. As in SBA's earlier WOSB Program set-aside rule, sole source awards under the WOSB program are only permitted in the industries that SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. Implementation of these sole source procedures in the FAR ensures that contracting officers will have the tools necessary to maximize Federal procurement opportunities for WOSB concerns.

II. Discussion and Analysis

In keeping with the tenets of the WOSB Program, the sole source authority may only be used in industry sectors that SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. The same eligibility requirements for participating in set-asides under the WOSB Program, set forth in SBA's regulations at 13 CFR 127.100 through 127.509, also apply to sole source acquisitions. In general, an award under the WOSB program may be pursued on a sole source basis when the contracting officer does not have a reasonable expectation, through market research, that two or more eligible EDWOSB or WOSB concerns will submit offers at a fair and reasonable price, but identifies one responsible EDWOSB or WOSB that can perform at a fair and reasonable price. The dollar thresholds for sole source awards are equal to or less than \$6.5 million for manufacturing requirements and equal to or less than \$4 million for all other requirements, including all options.

This rule amends FAR subparts 2.1, 4.8, 6.3, 18.1, 19.0, 19.1, 19.3, 19.15, and 52.2. These changes are summarized in the following paragraphs: