OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 18 2007

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR DIRECTORS DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DIRECTOR, ARMY CONTRACTING AGENCY
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR DEFENSE CONTRACT MANAGEMENT
AGENCY
DEPUTY DIRECTOR FOR LOGISTICS OPERATIONS (DLA)

SUBJECT: Small Business Size Rerepresentation – FAR Case 2006-032

This memorandum relates to the subject FAR case published in the Federal Register as an interim rule on July 5, 2007 (72 FR 36852), effective June 30, 2007, Federal Acquisition Circular 2005-018 . This memorandum has two purposes.

The first purpose is to advise you *not* to take the action required by FAR 4.602(f) until further notice. FAR 4.602(f) requires the contracting office to submit a contract action report (CAR) when the contractor's size status has changed. The FAR has been amended, at 19.301 and 52.219-28 Post-Award Small Business Program Rerepresentation (clause attached), to require contractors, that represented they were small business concerns prior to award, to rerepresent their size status on certain contracts when particular events occur. Contractors will be rerepresenting their size status in the Online Representations and Certifications Application and notifying the contracting office. If the contractor represents that it is no longer a small business, *from that point forward*, the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements. You *must wait to submit* CARs to change the contractor's size status on a contract until FPDS-NG has been modified and your contract writing system has been updated (if necessary) to interface correctly with FPDS-NG for the change. If a contracting office submits a CAR to change the size status for prospective actions under a contract before FPDS-NG has been modified, the size status on past actions will also be changed, corrupting historic small business goaling data. You must also wait to submit the CAR in instances where a contractor voluntarily requests that its size status on a particular contract be changed. You will be notified by separate memorandum when FPDS-NG has been modified to accommodate the changes in size status.

The second purpose is to advise you that the rule applies to solicitations issued and contracts awarded on or after June 30, 2007, *and* to certain contracts *awarded prior to that date*. If a solicitation issued on or after June 30, 2007, does not include clause 52.219-28, and the resulting contract is expected to exceed the micro-purchase threshold and be performed in the United States or its outlying areas, you must amend the solicitation to include the clause. You must modify all long-term contracts, as defined in 19.301-2(a), awarded to small business concerns before June 30, 2007, to include clause 52.219-28. You must also incorporate this clause in other contracts awarded before June 30, 2007, to small business concerns, at the time an option is exercised.

My action officer is Debbie Tronic, 703-602-0289, debbie.tronic@osd.mil.

Shay D. Assad,
Director, Defense Procurement and
Acquisition Policy

Attachments:
As stated

**52.219-28 Post-Award Small Business Program Rerepresentation**

As prescribed in 19.308(d), insert the following clause:

POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (**JUNE 2007**)

(a) *Definitions*. As used in this clause—

"Long-term contract" means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at http://www.sba.gov/services/contractingopportunities/sizestandardstopics/.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it □ is, □ is not a small business concern under NAICS Code _____ assigned to contract number _____.

*[Contractor to sign and date and insert authorized signer's name and title].*

(End of clause)