

## Size Protest Amendments to the FAR Are Coming

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The U.S. Small Business Administration (SBA) has made multiple changes to its regulations over the last decade, including final rules published in the Federal Register on October 2, 2013 ([78 FR 61113](#)), October 16, 2020 ([85 FR 66146](#)), and November 29, 2023 ([87 FR 73400](#)). These final rules published by the SBA clarified various aspects about size protests related to set-aside contracts and orders awarded to various small business concerns (i.e., HUBZone small businesses, service-disabled veteran-owned small businesses (SDVOSB), economically disadvantaged women-owned small businesses (EDWOSB), and women-owned small businesses (WOSB)).

In response to the SBA's regulation changes, the Federal Acquisition Regulatory Council recently [proposed amendments](#) to the Federal Acquisitions Regulation (FAR) to harmonize the SBA regulations (13 CFR) with the FAR (48 CFR).

**The proposed rule outlines four amendments to various sections of the FAR:**

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- FAR 19.302(a)(2) – Clarifies which entities may initiate a size status protest by referencing the SBA’s regulations found at [13 CFR 121.1001\(a\)](#).
  - FAR 19.302(d)(1) – Specifies when size protests are due on negotiated procurements (including protests on partial set-asides and reserves of multiple-award contracts and set-asides of orders against multiple-award contracts). The modification includes exceptions for orders and blanket purchase agreements placed under the Federal Supply Schedule. This modification implements the SBA’s regulations found at [13 CFR 121.1004\(a\)\(2\)](#).
  - FAR 19.306, 19.307, and 19.308 – Specifies when protests are due for orders placed under multiple-award contracts where the contracting officer requested re-representation of status. This modification implements the SBA’s regulations found at [13 CFR 126.801\(d\)](#), [13 CFR 134.1004\(a\)](#), and [13 CFR 127.603\(c\)](#).
  - FAR 19.306, 19.307, and 19.308 – Specifies when protests are due for orders set aside for HUBZone, SDVOSB, or EDWOSB/WOSB concerns when the multiple-award contract is not itself partially or totally set-aside or reserved for the particular concern. This modification includes exceptions for orders and blanket purchase agreements placed under the Federal Supply Schedule. This modification implements the SBA’s regulations found at [13 CFR 126.801\(d\)](#), [13 CFR 134.1004\(a\)](#), and [13 CFR 127.603\(c\)](#).

The proposed rule does not create any new solicitation provisions or contract clauses, nor does it impact any existing provisions or clauses.

Comments on the proposed rule are due by December 4, 2023.

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