



B-283237

July 29, 1999

The Honorable Fred Thompson
Chairman
The Honorable Joseph I. Lieberman
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable Dan Burton
Chairman
The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

Subject: Department of Defense, General Services Administration, and National Aeronautics and Space Administration: Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Defense, General Services Administration, and National Aeronautics and Space Administration, entitled "Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement" (RIN: 9000-AH59). We received the rule on July 16, 1999. It was published in the Federal Register as a final rule on July 2, 1999. 64 Fed. Reg. 36222.

The rule adopts as final the interim rules that were the subject of our major rule report issued on July 16, 1998. (B-280535; B-280536, GAO/OGC-98-64) The interim rules reformed affirmative action in federal procurement to ensure compliance with the constitutional standards established by the Supreme Court in Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1995).

The only significant change in the interim rules involves the provision allowing contractors acting in good faith to rely upon the self-representations of their subcontractors as to their status as small disadvantaged business concerns. The period of time for subcontractors to become certified under rules issued by the

Small Business Administration has been extended by the final rule until September 30, 1999.

This change does not affect the factual statements or the conclusions concerning the agencies' compliance with the statutes and executive orders discussed in the July 16, 1998, major rule report.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Bernie Ungar, Director, Government Business Operations Issues. Mr. Ungar can be reached at (202) 512-8387.

Sincerely yours,

Robert P. Murphy
General Counsel

cc: Ms. Ida M. Ustad
Deputy Associate Administrator
Office of Acquisition Policy
Office of Governmentwide Policy
General Services Administration