

# Part 19 - Small Business

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## **19.000 Scope of part.**

(a) This part implements the acquisition-related sections of the Small Business Act (15 U.S.C. 631, *et seq.*) and 41 U.S.C. 3104. It covers—

(1) The determination that a concern is eligible for participation in the programs identified in this part;

(2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;

(3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) participants, HUBZone small business concerns, service-disabled veteran-owned small business (SDVOSB) concerns eligible under the SDVOSB Program, and economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program;

(4) The certificate of competency program;

(5) The subcontracting assistance program;

(6) The “8(a)” business development program (hereafter referred to as 8(a) Program), under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;

(7) The use of a price evaluation preference for HUBZone small business concerns;

(8) Sole source awards to HUBZone small business concerns, service-disabled veteran-owned small business concerns, and EDWOSB concerns and WOSB concerns eligible under the WOSB Program; and

(9) The use of reserves.

(b) (1) Unless otherwise specified in this part (see 19.109 and 19.204)—

(i) Contracting officers must apply this part in the United States and its outlying areas; and

(ii) Contracting officers may apply this part outside the United States and its outlying areas.

(2) Offerors that participate in any procurement under this part must meet the definition of “small business concern” at 2.101.

## **19.001 Definitions.**

As used in this part—

*Alaska Native Corporation (ANC)* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

*Commercial plan* means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and performance of commercial services sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

*Concern* means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For more information, see 13 CFR 121.105.

*Failure to make a good faith effort to comply with the subcontracting plan* means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

*Fair market price* means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.205(c)).

*Indian tribe* means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

*Individual subcontracting plan* means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

*Industry* means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification system (NAICS) manual.

*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.

*Master subcontracting plan* means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

*Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required to perform the contract, contract modification, or subcontract.

*Subcontracting Plan Reporting (SPR)* means the electronic subcontracting reporting system at SAM.gov for small business subcontracting program reporting.

*Total contract dollars* means the final anticipated dollar value, including the dollar value of all options.

## **Subpart 19.1 - Presolicitation**

### **19.101 Small business goals.**

(a) It is the Government's policy to provide maximum practicable opportunities in its acquisitions to small business and other small business socioeconomic categories (i.e. veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns). Heads of contracting activities are responsible for achieving goals for small business and those other socioeconomic categories (15 U.S.C. 644(g)).

(1) Agencies must measure the extent of participation by small business and other small business socioeconomic categories in Government acquisitions in terms of the total value of contracts placed during each fiscal year. Agencies must report this data to the Small Business Administration (SBA) at the end of each fiscal year (see 4.301).

(2) (i) SBA certifies offerors as veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, and women-owned small business concerns under the WOSB Program. SBA certifications can be found in the Small Business Search (SBS) website. To be eligible as a small business concern or small disadvantaged business concern, an offeror is required to represent in good faith that it meets the definition of those respective terms.

(ii) (A) Insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied this part in accordance with 19.000(b)(1)(ii).

(B) Use the provision with its Alternate II in solicitations that will result in a multiple-award contract with more than one NAICS code assigned. This is authorized for solicitations issued after October 1, 2028 (see 19.103(b)(2)).

(iii) (A) Insert the clause at 52.219-28, Postaward Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied this part in accordance with 19.000(b)(1)(ii).

(B) Use the clause with its Alternate I in solicitations and the resulting multiple-award contracts with more than one NAICS code. This is authorized for solicitations issued after October 1, 2028 (see 19.103(b)(2)).

(b) Contracting officers can use various acquisition strategies to further the policy and achieve the goals referenced in paragraph (a). As summarized below, some are discretionary, but others are mandatory for certain acquisitions.

(1) Contracting officers must plan acquisitions (i.e. contracts) so that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by SBA against loss under 15 U.S.C. 694b (see definition of “applicable statutory limit” at 13 CFR 115.10).

(2) Contracting officers must, to the extent practicable, encourage maximum participation by small business concerns in acquisitions. They can do this by publicizing solicitations and contract awards through the Governmentwide point of entry (see subparts 5.2 and 5.3).

(3) Contracting officers must set aside contracts valued at more than the micro-purchase threshold for small businesses in certain circumstances. See 19.104.

(4) Contracting officers may set aside or sole source contracts under the HUBZone Program. See 19.105.

(5) Contracting officers may set aside or sole source contracts under the SDVOSB Program. See 19.106.

(6) Contracting officers may set aside or sole source contracts under the WOSB Program. See 19.107.

(7) Contracting officers may set aside or sole source contracts under the 8(a) Program. See 19.108.

(8) Contracting officers may set aside task orders or delivery orders. See 19.111-2.

(9) Contracting officers must require a small business subcontracting plan in certain acquisitions. See 19.109 and 19.302-1.

(10) Contracting officers must use a HUBZone price evaluation preference in full and open competitions. See 19.110.

(11) Contracting officers may use reserves on multiple-award contracts for any of the small business concerns identified in 19.000(a)(3). See 19.112.

(c) In certain instances, contracting officers must award to the small business when there are equal low bids from a small and other than small business. See 19.203.

(d) When an apparent successful small business offeror has been determined to be nonresponsible, contracting officers must refer the business to SBA for a certificate of competency. A certificate of competency would allow award to be made to that small business offeror. See 19.204.

### **19.102 Coordination.**

(a) SBA helps contracting personnel ensure their agency meets their small business goals. The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU), or for the Department of Defense, the Director of the Office of Small Business Programs (OSBP) serves as the agency focal point for interfacing with SBA. In certain instances, coordinating with SBA, the Director of the OSDBU, or the Director of OSBP is required.

(b) (1) The SBA may assign one or more procurement center representatives (PCRs) to any contracting activity or contract administration office to carry out SBA policies and programs. Assigned SBA PCRs are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its PCRs security clearances required by the contracting agency.

(2) If an SBA PCR is not assigned to the procuring activity or contract administration office, contact the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located for assistance in carrying out SBA policies and programs. See <https://www.sba.gov/federal-contracting/counseling-help/procurement-cen...> for the location of the SBA office servicing the activity.

(c) Upon their request and subject to applicable acquisition and security regulations, contracting officers must give SBA PCRs (or, if a PCR is not assigned, see paragraph (b) of this section) access to all reasonably obtainable contract information that is directly pertinent to their official duties.

(d) The duties assigned by SBA to its PCR are set forth at 13 CFR 125.2(b) and include but are not limited to reviewing proposed acquisitions to recommend the set-aside or sole-source award to a small business of selected acquisitions.

(e) (1) Contracting officers must provide a copy of the proposed acquisition package and other reasonably obtainable information related to the acquisition to the SBA procurement center representative at least 30 days before the solicitation is issued if—

(i) The proposed acquisition is for supplies or services that a small business currently provides, and the proposed acquisition is of a quantity or estimated dollar

value that makes it unlikely that small businesses can compete for the prime contract;

(ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects, and the magnitude of this packaging or consolidation makes it unlikely that small businesses can compete for the prime contract; or

(iii) The proposed acquisition is for a consolidated or bundled requirement. The contracting officer must provide all information to justify the consolidation or bundling. The contracting officer must also provide the same information to the agency OSDBU or for the Department of Defense, the OSBP.

(2) For acquisitions described in paragraph (e)(1) of this section, provide a statement explaining why the—

(i) Proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) Delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

(iii) Proposed acquisition cannot be structured to make it likely that small businesses can compete for the prime contract;

(iv) Consolidated construction project cannot be acquired as separate discrete projects; or

(v) Bundling is necessary and justified.

(3) Process the 30-day notification at the same time as other processing steps required before issuing the solicitation.

(4) If the SBA PCR believes that the acquisition as proposed makes it unlikely that small businesses can compete for the prime contract, the representative will recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. The representative has 15 days after receiving the package to make the recommendation to the contracting officer.

(f) If the contracting officer rejects a recommendation of the SBA PCR (or, if a procurement center representative is not assigned, see paragraph (b) of this section), written notice must be furnished to the appropriate SBA representative within 5 working days of the contracting officer's receipt of the recommendation.

(1) The SBA PCR (or, if a PCR is not assigned, see paragraph (b) of this section) may appeal the contracting officer's rejection to the head of the contracting activity within 2 working days after receiving the notice. The head of the contracting activity shall render a decision in writing, and provide it to the SBA representative within 7 working days. Pending issuance of a decision to the SBA representative, the contracting officer must suspend action on the acquisition.

(2) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate—

(i) Within 2 working days, the SBA PCR (or, if a PCR is not assigned, see paragraph (b) of this section) may request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f)(5) of this section); and

(ii) The SBA must be allowed 15 working days after making such a written request, within which the Administrator of SBA—

(A) May appeal to the Secretary of the Department concerned; and

(B) Must notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it is deemed that the SBA request to suspend the contract action has been withdrawn and that an appeal to the Secretary was not taken.

(3) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) must forward justification for its decision to the agency head. The contracting officer must suspend contract action until notification is received that the SBA appeal has been settled.

(4) The agency head must reply to the SBA within 30 working days after receiving the appeal. The decision of the agency head shall be final.

(5) A request to suspend action on an acquisition need not be honored if the contracting officer determines that proceeding to contract award and performance is in the

public interest. The contracting officer must include in the contract file a statement of the facts justifying the determination, and must promptly notify the SBA representative of the determination and provide a copy of the justification.

(g) Contracting officers must consider the recommendations of the agency Director of the OSDBU or for the Department of Defense, the Director of the OSBP as to whether a particular contract should be set aside (see 19.104). Agencies must establish procedures including dollar thresholds for the Director to review acquisitions to make these recommendations. The contracting officer must document in the contract file whenever the Director's recommendations are not accepted.

### **19.103 Small business size standards.**

*(a) Locating size standards and North American Industry Classification System codes.*

(1) SBA establishes small business size standards on an industry-by-industry basis. Small business size standards and corresponding North American Industry Classification System (NAICS) codes are provided at 13 CFR 121.201. They are also available at <https://www.sba.gov/document/support--table-size-standards>.

(2) NAICS codes are updated by the Office of Management and Budget through its Economic Classification Policy Committee every five years. New NAICS codes are not available for use in Federal contracting until SBA publishes corresponding size standards. NAICS codes are available from the U.S. Census Bureau at <https://www.census.gov/naics/>.

(3) SBA determines the size status of a concern, including its affiliates, as of the date the concern represents that it is small to the contracting officer as part of its initial offer, which includes price.

(4) When an agency uses a solicitation for a multiple-award contract that does not require offers for the contract to include price, SBA determines size as of the date of initial offer for the multiple-award contract, whether or not the offer includes price or the price is evaluated. (See 13 CFR 121.404(a)(1)(iv)).

*(b) Determining the appropriate NAICS codes for the solicitation.*

(1) Unless required to do otherwise by paragraph (b)(2)(ii)(B) of this section, contracting officers must assign one NAICS code and corresponding size standard to all solicitations, contracts, and task or delivery orders. The contracting officer must determine the appropriate NAICS code by classifying the product or service being acquired in the one industry that best describes the principal purpose of the supply or service being acquired.

(2) (i) For solicitations issued on or before October 1, 2028, that will result in multiple-award contracts, the contracting officer must assign a NAICS code in accordance with paragraph (b)(1) of this section.

(ii) For solicitations issued after October 1, 2028, that will result in multiple-award contracts, the contracting officer must—

(A) Assign a single NAICS code (and corresponding size standard) that best describes the principal purpose of both the acquisition and each subsequent order; or

(B) Divide the acquisition into distinct portions or categories (e.g., line item numbers, Special Item Numbers, sectors, functional areas, or equivalent) and assign each portion or category a single NAICS code and size standard that best describes the principal purpose of the supplies or services to be acquired under that distinct portion or category.

(3) The contracting officer's designation is final unless appealed in accordance with the procedures in paragraph (d) of this section.

*(c) Application of small business size standards to solicitations.*

(1) The contracting officer must apply the size standard in effect on the date the solicitation is issued.

(2) The contracting officer may amend the solicitation and use the new size standard if SBA amends the size standard and it becomes effective before the due date for receipt of initial offers.

*(d) Appealing the contracting officer's North American Industry Classification System code and size standard determination.* The contracting officer's determination is final unless appealed as follows:

(1) An appeal of a contracting officer's NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation or any amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at any time before offers are due.

(2) Appeals of a contracting officer's NAICS code designation or applicable size standard may be filed with SBA's Office of Hearings and Appeals (OHA) by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the SBA Associate Administrator for Business Development may appeal a NAICS code designation; or

(ii) The Associate or Assistant Director for the SBA program involved, through SBA's Office of General Counsel.

(3) Contracting officers must advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see part 5). Such notices must include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA's OHA will dismiss summarily an untimely NAICS code appeal.

(5) NAICS code appeals are filed in accordance with 13 CFR 121.1103.

(6) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and the Administrative Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR part 134), and must be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must withhold award, unless withholding award is not in the best interests of the Government, and immediately send to OHA an electronic link to or a paper copy of both the original solicitation and all amendments relating to the NAICS code appeal. The contracting officer must inform OHA of any amendments, actions, or developments concerning the procurement in question.

(7) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

(e) For procedures related to determining size prior to award, see FAR 19.201.

## **19.104 Small business set-asides**

### **19.104-1 Total small business set-asides.**

(a) A “set-aside for small business” is the limiting of an acquisition exclusively for participation by small business concerns. For contracts above the micro-purchase threshold, the contracting officer must set the contract aside for small business if there is a reasonable expectation of obtaining offers—

(1) From two or more responsible small business concerns; and

(2) That are competitive in terms of fair market prices, quality, and delivery.

(b) (1) The contracting officer makes the determination to do a small business set-aside under paragraph (a). The contracting officer must document the reason when a contract is not set aside for small business as required.

(2) If the contracting officer rejects a recommendation by SBA to do a small business set-aside, see 19.102(f).

(c) The requirement in paragraph (a) of this section does not apply to purchases at or below the micro-purchase threshold or purchases from required sources under part 8 (e.g., Committee for Purchase From People Who are Blind or Severely Disabled).

(d) When using competitive procedures in accordance with 8.304(b)(1), agencies must include Federal Prison Industries, Inc. (FPI), in the solicitation process for a small business set-aside and consider a timely offer from FPI.

(e) The requirements of paragraph (a) do not preclude the contracting officer from awarding a contract to a small business under the HUBZone Program, SDVOSB Program, WOSB Program, or 8(a) Program. See FAR 19.105 through 19.108.

(f) (1) Any concern, including a supplier, that is awarded a contract or order subject to the nonmanufacturer rule, other than a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce (*i.e.*, a “nonmanufacturer”), is required to provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas.

(2) When the end item being acquired is a kit of supplies the offeror may not exceed 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519.

(3) (i) The SBA may grant an individual or a class waiver to the nonmanufacturer rule to allow a nonmanufacturer to provide an end item of an other than small business without regard to the place of manufacture, processing, or production.

(A) *Class waiver.* An agency may request that SBA waive the requirement at paragraph (f)(1) or (f)(2) of this section for a specific product or class of products. See 13 CFR 121.1202 for an explanation of when SBA will issue a class waiver.

(B) *Individual waiver.* The contracting officer may also request a waiver of the requirements at paragraph (f)(1) or (f)(2) of this section for an individual acquisition once the contracting officer determines through market research that no known small business manufacturers, processors, or producers in the United States or its outlying areas can reasonably be expected to offer an end item meeting the requirements of the solicitation. This type of waiver is known as an individual waiver and would apply only to a specific acquisition.

(ii) Requests for waivers must include the content specified at 13 CFR 121.1204 and must be sent via email to [nmrwaivers@sba.gov](mailto:nmrwaivers@sba.gov) or by mail to the— Director, Office of Government Contracting, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

(iii) For the most current listing of class waivers, contact the SBA Office of Government Contracting or go to <https://www.sba.gov/document/support-non-manufacturer-rule-class-waiver...>

(iv) The contracting officer must provide potential offerors with written notification of any class or individual waiver in the solicitation. If providing the notification after solicitation issuance, the contracting officer must provide potential offerors a reasonable amount of additional time to respond to the solicitation.

(4) (i) If at least 50 percent of the estimated contract value is composed of items that are manufactured, processed, or produced by small business concerns, then a waiver of the nonmanufacturer rule is not required. There is no requirement that each item acquired in a multiple-item acquisition be manufactured, processed, or produced by a small business in the United States or its outlying areas.

(ii) If more than 50 percent of the estimated acquisition cost is composed of items manufactured, processed, or produced by other than small business concerns, then a waiver is required. SBA may grant an individual waiver for one or more items in an acquisition in order to ensure that at least 50 percent of the cost of

the items to be supplied by the nonmanufacturer comes from small business manufacturers, processors, and producers in the United States or its outlying areas or are subject to a waiver.

(iii) If a small business offeror is both a manufacturer of item(s) and a nonmanufacturer of other item(s) for an acquisition, the contracting officer must apply the manufacturer size standard.

(g) For evaluation requirements related to set-asides, see FAR 19.205.

#### **19.104-2 Partial small business set-asides.**

(a) Contracting officers may, at their discretion, set aside a portion or portions of an acquisition, except for construction, for any of the small business concerns identified at 19.000(a)(3) when—

(1) Market research indicates that a total set-aside is not appropriate (see 19.104-1);

(2) The requirement can be divided into distinct portions;

(3) The acquisition is not subject to simplified acquisition procedures;

(4) Two or more responsible small business concerns are reasonably expected to submit an offer on the set-aside portion or portions of the acquisition that are competitive in terms of fair market prices, quality, and delivery; and

(5) The specific program eligibility requirements identified in this part apply.

(b) When the contracting officer determines that a requirement is to be partially set aside, the solicitation must identify which portion or portions are set aside and not set aside.

(c) The contracting officer must specify in the solicitation how offers must be submitted with regard to the set-aside and non-set-aside portions.

(d) Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and must be rejected on the set-aside portion of partial set-asides. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see 19.201).

(e) For evaluation requirements related to partial set-asides, see FAR 19.205.

#### **19.104-3 Small business set-aside clauses.**

(a) The contracting officer must insert the clause at 52.219-6, Notice of Total Small Business Set-Aside, in solicitations involving total small business set-asides. This includes multiple-award contracts when orders may be set aside for any of the small business concerns identified in 19.000(a)(3), as described in parts 8 and 16. Use the provision with its Alternate I when including FPI in the competition in accordance with 19.104-1(d).

(b) The contracting officer must insert the clause at 52.219-7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides. This includes part or parts of multiple-award contracts. Use the clause at 52.219-7 with its Alternate I when including FPI in the competition in accordance with 19.104-1(d).

(c) The contracting officer must insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts—

(1) For supplies, services, and construction, if any portion of the requirement is to be set aside for small business and the contract amount is expected to exceed the simplified acquisition threshold, and in any solicitations and contracts that are set aside or awarded on a sole-source basis in accordance with sections 19.105, 19.106, 19.107, and 19.108, regardless of dollar value. This includes multiple-award contracts when orders may be set aside for small business concerns, as described in subpart 8.4 and subpart 16.5. For contracts that are set aside, the contracting officer must indicate in paragraph (f) of the clause whether compliance with the limitations on subcontracting is required at the contract or order level;

(2) Using the HUBZone price evaluation preference (see 19.110). However, if the prospective contractor waived the use of the preference, or is an other than small business, do not insert the clause in the resultant contract.

(d) The contracting officer must insert the clause at 52.219-13, Notice of Set-Aside of Orders, in all solicitations for multiple-award contracts under which orders may be set aside for any of the small business concerns identified in 19.000(a)(3), and all contracts awarded from such solicitations.

(e) (1) The contracting officer must insert the clause at 52.219-33, Nonmanufacturer Rule, in solicitations and contracts, including multiple-award contracts, when orders may be set aside for small business concerns as described in subpart 8.4 and subpart 16.5, when—

(i) the item being acquired has been assigned a manufacturing or supply NAICS code, and—

(ii) (A) Any portion of the requirement is to be—

(1) Set aside for small business and is expected to exceed the simplified acquisition threshold; or

(2) Set aside or awarded on a sole-source basis in accordance with sections 19.105, 19.106, 19.107, and 19.108, regardless of dollar value; or

(B) Using the HUBZone price evaluation preference (see 19.110). However, if the prospective contractor waived the use of the price evaluation preference, or is an other than small business, do not insert the clause in the resultant contract.

(2) The contracting officer must not insert the clause at 52.219-33 when the Small Business Administration has waived the nonmanufacturer rule (see 19.104-1(f)(3)).

## **19.105 Historically Underutilized Business Zone (HUBZone) Program.**

### **19.105-1 Status as a HUBZone small business concern.**

(a) Status as a HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR part 126. If SBA determines that a concern is a HUBZone small business, it will designate the concern as a HUBZone small business in the Small Business Search (SBS) at <https://search.certifications.sba.gov/>. SBA's designation also appears in the System for Award Management (SAM).

(b) For a HUBZone small business concern that seeks a HUBZone set-aside or sole-source contract, the contracting officer must verify that the offeror is designated in SBS or SAM as a HUBZone small business concern certified by SBA.

(c) A joint venture may be considered a HUBZone small business concern if—

(1) The joint venture qualifies as small under 19.201-1(b)(1);

(2) At least one party to the joint venture is a HUBZone small business concern; and

(3) The joint venture complies with 13 CFR 126.616(a) through (c).

(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern at the time of its initial offer.

### **19.105-2 Set-aside procedures.**

(a) The contracting officer—

(1) May set aside contracts exceeding the micro-purchase threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied; and

(2) Must consider HUBZone set-asides before considering HUBZone sole-source awards (see 19.105-3).

(b) To set aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

(c) If the contracting officer receives only one acceptable offer from a HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside must be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see 19.104).

(d) The procedures at 19.102(f) apply to this section if the contracting officer decides to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) to set aside a contract for competition restricted to HUBZone small business concerns.

### **19.105-3 Sole source awards.**

(a) A contracting officer may consider a contract award to a HUBZone small business concern on a sole-source basis (see 6.103-5(c)(1)) provided—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

(2) The anticipated price of the contract, including options, will not exceed—

(i) \$8.5 million for a requirement within the North American Industry Classification System (NAICS) codes for manufacturing; or

(ii) \$5.5 million for a requirement within all other NAICS codes;

(3) The HUBZone small business concern has been determined to be a responsible contractor with respect to performance; and

(4) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a HUBZone sole-source award (see 13 CFR 126.610).

#### **19.105-4 Contract clauses.**

(a) The contracting officer must insert the clause at 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award, in solicitations and contracts for acquisitions that are set aside or awarded on a sole-source basis to, HUBZone small business concerns under 19.105-2 or 19.105-3. This includes multiple-award contracts when orders may be set aside for HUBZone small business concerns as described in subpart 8.4 and subpart 16.5.

(b) For use of clause 52.219-14, Limitations on Subcontracting, see the prescription at 19.104-3(c).

(c) For use of clause 52.219-33, Nonmanufacturer Rule, see the prescription at 19.104-3(e).

#### **19.106 Service-Disabled Veteran-Owned Small Business (SDVOSB) Program.**

##### **19.106-1 Status as a SDVOSB concern.**

(a) Status as an SDVOSB concern is determined by SBA in accordance with 13 CFR part 128.

(b) For an SDVOSB concern that seeks an SDVOSB set-aside or sole-source contract, the contracting officer must verify that the offeror is designated in the System for Award Management (SAM) as an SDVOSB concern certified by SBA.

(c) A joint venture may be considered an SDVOSB concern eligible under the SDVOSB Program if—

(1) The joint venture qualifies as small under 19.201-1(b)(1);

(2) The managing SDVOSB joint venture partner is designated in SAM as an SDVOSB concern certified by SBA; and

(3) The joint venture complies with the requirements of 13 CFR 128.402.

##### **19.106-2 Set-aside procedures.**

(a) The contracting officer—

(1) May set-aside contracts exceeding the micro-purchase threshold for competition restricted to SDVOSB concerns when the requirements of paragraph (b) of this section can be satisfied; and

(2) Must consider SDVOSB set-asides before considering SDVOSB sole source awards (see 19.106-3).

(b) A contracting officer may restrict competition to SDVOSB concerns eligible under the SDVOSB Program if there is a reasonable expectation based on market research that—

(1) Two or more SDVOSB concerns eligible under the SDVOSB Program will submit offers; and

(2) Award will be made at a fair market price.

(c) If the contracting officer receives only one acceptable offer from an SDVOSB concern eligible under the SDVOSB Program in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from SDVOSB concerns eligible under the SDVOSB Program, the SDVOSB set-aside must be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see 19.104).

(d) The procedures at 19.102(f) apply to this section if the contracting officer decides to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) to set aside a contract for competition restricted to SDVOSB concerns.

### **19.106-3 Sole source awards.**

(a) A contracting officer may consider a contract award to a SDVOSB concern on a sole source basis (see 6.103-5(c)(1)), provided—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more SDVOSB concerns;

(2) The anticipated award price of the contract, including options, will not exceed—

(i) \$8.5 million for a requirement within the NAICS codes for manufacturing;

or

(ii) \$5 million for a requirement within any other NAICS code;

(3) The SDVOSB concern has been determined to be a responsible contractor with respect to performance; and

(4) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make an SDVOSB sole-source award (see 13 CFR 128.407).

#### **19.106-4 Contract clauses.**

(a) The contracting officer must insert the clause at 52.219-27, Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program, in solicitations and contracts for acquisitions that are set aside or awarded on a sole-source basis to, service-disabled veteran-owned small business concerns under 19.106-2 and 19.106-3. This includes multiple-award contracts when orders may be set aside for service-disabled veteran-owned small business concerns as described in subpart 8.4 and subpart 16.5.

(b) For use of clause 52.219-14, Limitations on Subcontracting, see the prescription at 19.104-3(c).

(c) For use of clause 52.219-33, Nonmanufacturer Rule, see the prescription at 19.104-3(e).

#### **19.107 Women-Owned Small Business (WOSB) Program.**

##### **19.107-1 Status under the WOSB Program.**

(a) Status as an economically disadvantaged women-owned small business (EDWOSB) concern or WOSB concern eligible under the WOSB Program is determined by the Small Business Administration in accordance with 13 CFR part 127.

(b) For a WOSB that seeks a WOSB or EDWOSB set-aside or sole-source contract, the contracting officer must verify prior to award that the offeror is designated as a certified EDWOSB or WOSB concern in the System for Award Management (SAM).

(c) A joint venture may be considered an EDWOSB concern or WOSB concern eligible under the WOSB Program if the EDWOSB or WOSB participant is certified in SAM and the joint venture meets the requirements of 13 CFR 127.506.

##### **19.107-2 Set-aside procedures.**

(a) The contracting officer—

(1) May set aside contracts exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns when the acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement; or

(2) May set aside contracts exceeding the micro-purchase threshold for competition restricted to WOSB concerns eligible under the WOSB Program when the acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement, as specified on SBA's website at <http://www.sba.gov/WOSB>.

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that—

- (1) Two or more EDWOSB concerns will submit offers for the contract; and
- (2) Contract award will be made at a fair and reasonable price.

(c) For requirements in NAICS codes designated by SBA as substantially underrepresented, a contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns) if there is a reasonable expectation based on market research that—

- (1) Two or more WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), will submit offers; and
- (2) Contract award may be made at a fair and reasonable price.

(d) The contracting officer may make an award, if only one acceptable offer is received from a qualified EDWOSB concern or WOSB concern eligible under the WOSB Program. If no acceptable offers are received from an EDWOSB concern or WOSB concern eligible under the WOSB Program, the set-aside must be withdrawn and the requirement, if still valid, set aside for small business, as appropriate (see subpart 19.104).

(e) The procedures at 19.102(f) apply to this section if the contracting officer decides to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) to set aside a contract for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program.

### **19.107-3 Sole source awards.**

(a) A contracting officer may consider a contract award to an EDWOSB concern on a sole-source basis (see 6.103-5(c)(1)) provided—

- (1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB concerns; and

(3) The conditions in paragraph (c) of this section exist.

(b) A contracting officer may consider a contract award to a WOSB concern (including EDWOSB concerns) eligible under the WOSB Program on a sole-source basis (see 6.103-5(c)(1)) provided—

(1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more WOSB concerns (including EDWOSB concerns); and

(3) The conditions in paragraph (c) of this section exist.

(c) (1) The anticipated award price of the contract, including options, will not exceed—

(i) \$8.5 million for a requirement within the NAICS codes for manufacturing;

or

(ii) \$5.5 million for a requirement within any other NAICS codes.

(2) The EDWOSB concern or WOSB concern has been determined to be a responsible contractor with respect to performance.

(3) The award can be made at a fair and reasonable price.

(d) The SBA has the right to appeal the contracting officer's decision not to make a sole-source award to either an EDWOSB concern or WOSB concern eligible under the WOSB program.

#### **19.107-4 Contract clauses.**

(a) The contracting officer must insert the clause at 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-owned Small Business Concerns, in solicitations and contracts for acquisitions that are set aside or awarded on a sole-source basis to, EDWOSB concerns under 19.107-2(b) or 19.107-3(a). This includes multiple-award contracts when orders may be set aside for EDWOSB concerns as described in subpart 8.4 and subpart 16.5.

(b) The contracting officer must insert the clause at 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside or awarded on a sole-source basis to WOSB concerns under 19.107-2(c) or 19.107-3(b). This includes

multiple-award contracts when orders may be set aside for WOSB concerns eligible under the WOSB Program as described in subpart 8.4 and subpart 16.5.

(c) For use of clause 52.219-14, Limitations on Subcontracting, see the prescription at 19.104-3(c).

(d) For use of clause 52.219-33, Nonmanufacturer Rule, see the prescription at 19.104-3(e).

## **19.108 Contracting With the Small Business Administration (the 8(a) Program)**

### **19.108-1 General.**

(a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and award subcontracts for performing those contracts to firms eligible for program participation. This program is the “8(a) Business Development Program,” commonly referred to as the “8(a) program.” A small business that is accepted into the 8(a) program is known as a “participant.” SBA's subcontractors are referred to as “8(a) contractors.” As used in this subpart, an 8(a) contractor is an 8(a) participant that is currently performing on a Federal contract or order that was set aside for 8(a) participants.

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) participants on either a sole source or competitive basis.

(c) Acting under the authority of the program, the SBA certifies to an agency that SBA is competent and responsible to perform a specific contract. The contracting officer has the discretion to award the contract to the SBA based upon mutually agreeable terms and conditions.

(d) When SBA has delegated its 8(a) program contract execution authority to an agency, the contracting officer must refer to its agency supplement or other policy directives for appropriate guidance.

### **19.108-2 Determining eligibility for the 8(a) program.**

Determining the eligibility of a small business to be a participant in the 8(a) program is the responsibility of the SBA. SBA's regulations on eligibility requirements for participation in the 8(a) program are found at 13 CFR 124.101 through 124.112. SBA designates the concern as an 8(a) participant in the Small Business Search (SBS) at <https://search.certifications.sba.gov/>. SBA's designation also appears in the System for Award Management (SAM).

### **19.108-3 Selecting acquisitions for the 8(a) program.**

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) participants to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways:

(a) The SBA advises the contracting activity of an 8(a) participant's capabilities through a search letter and requests the contracting activity to identify acquisitions to support the participant's business plans. In these instances, the SBA will provide at a minimum the following information in order to enable the contracting activity to match an acquisition to the participant's capabilities:

(1) Identification of the participant and its owners.

(2) Background information on the participant, including any and all information pertaining to the participant's technical ability and capacity to perform.

(3) The participant's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the participant's plans to present and future agency requirements.

(5) If construction is involved, the request must also include the following:

(i) A participant's capabilities in and qualifications for accomplishing various categories of construction work typically found in North American Industrial Category System subsector 236 (construction of buildings), subsector 237 (heavy and civil engineering construction), or subsector 238 (specialty trade contractors).

(ii) The participant's capacity in each construction category in terms of estimated dollar value (e.g., electrical, up to \$100,000).

(b) The SBA identifies a specific requirement for one or more 8(a) participant(s) and sends a requirements letter to the agency's OSD/BU, or for the Department of Defense, OSBP, requesting the contracting office offer the acquisition to the 8(a) program. In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; e.g., project name or number;

(2) A statement as to how the required equipment and real property will be provided in order to ensure that the participant will be fully capable of satisfying the agency's requirements;

(3) If construction, information as to the bonding capability of the participant(s); and

(4) Either—

(i) If a sole source request—

(A) The reasons why the participant is considered suitable for this particular acquisition; e.g., previous contracts for the same or similar supply or service; and

(B) A statement that the participant is eligible in terms of its small business size status relative to the assigned NAICS code, business support levels, and business activity targets; or

(ii) If competitive, a statement that at least two 8(a) participants are considered capable of satisfying the agency's requirements and a statement that the participants are also eligible in terms of their small business size status relative to the assigned NAICS code, business support levels, and business activity targets. If requested by the contracting office, SBA will identify at least two such participants and provide information concerning the participants' capabilities.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) participant, identify a requirement for the 8(a) program, they may offer on behalf of a specific 8(a) participant, for the 8(a) program in general, or for 8(a) competition.

#### **19.108-4 Evaluation, offering, and acceptance.**

(a) *Agency evaluation.* In determining the extent to which a requirement should be offered in support of the 8(a) program, the agency should evaluate—

(1) Current and future plans to acquire the specific items or work that 8(a) participants are seeking to provide, identified in terms of—

(i) Estimated quantities of the supplies or services required or the estimated number of construction projects planned;

(ii) Length of contract, including option periods (see 19.303-1(d)); and

(iii) Performance or delivery requirements, including—

(A) Required monthly production rates, when applicable; and

(B) For construction, the geographical location where work is to be performed;

(2) The impact of any delay in delivery;

(3) Whether the items or work have previously been acquired using small business set-asides, and the date the items or work were acquired;

(4) Problems encountered in previous acquisitions of the items or work from the 8(a) participants or other contractors; and

(5) Any other pertinent information about known 8(a) participants, the items, or the work. This includes any information concerning the participants' products or capabilities. When necessary, the contracting agency must make an independent review of the factors in 19.108-3(a) and other aspects of the participants' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) program.

*(b) Agency offering.*

(1) After completing its evaluation, the contracting office must notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification, referred to as an offering letter, must identify the time frames within which resulting 8(a) awards must be completed in order for the agency to meet its responsibilities. The offering letter must also contain the following information applicable to each prospective contract:

(i) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(ii) The estimated period of performance.

(iii) The NAICS code that applies to the principal nature of the acquisition.

(iv) The anticipated dollar value of the requirement, including options, if any.

(v) Any special restrictions or geographical limitations on the requirement (for construction, include the location of the work to be performed).

(vi) Any special capabilities or disciplines needed for contract performance.

(vii) The type of contract anticipated. In accordance with 8.104, use of existing government-wide contracts is required in certain instances.

(viii) The acquisition history, if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.

(ix) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business, HUBZone, service-disabled veteran-owned small business set-aside, or a set-aside under the Women-Owned Small Business (WOSB) Program, and that no other public communication (such as a notice through the Governmentwide point of entry (GPE)) has been made showing the contracting agency's clear intention to set-aside the acquisition for small business, HUBZone small business, service-disabled veteran-owned small business concerns, or a set-aside under the WOSB Program.

(x) Identification of any particular 8(a) participant designated for consideration, including a brief justification, such as—

(A) The 8(a) participant, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program; or

(B) The acquisition is a follow-on or renewal contract and the nominated 8(a) participant is the incumbent.

(xi) Bonding requirements, if applicable.

(xii) Identification of all 8(a) participants which have expressed an interest in being considered for the acquisition. This should include a list of all 8(a) contract-holders on an existing government-wide contract that is planned to be used to fill the requirement (see 8.104).

(xiii) Identification of all SBA field offices that have asked for the acquisition for the 8(a) program.

(xiv) A request, if appropriate, that a requirement with an estimated contract value under the applicable competitive threshold be awarded as an 8(a) competitive contract (see 19.108-7(d)). SBA has already authorized certain government-wide contracts (e.g. Federal Supply Schedule) to allow competition amongst the 8(a) contract-holders at any dollar value. To determine whether SBA has provided this authority for the contract planned to be used, refer to the ordering procedures for that contract.

(xv) A request, if appropriate, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole source contract (see 19.108-7(b)).

(xvi) Any other pertinent and reasonably available data.

(2) An agency offering a construction requirement for which no specific offeror is nominated should submit it to the SBA District Office for the geographical area where the work is to be performed.

(3) An agency offering a construction requirement on behalf of a specific offeror should submit it to the SBA District Office servicing that concern.

(4) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated 8(a) participant. If the contracting officer is not nominating a specific 8(a) participant, the offering letter should be forwarded to the district office servicing the geographical area in which the contracting office is located.

(5) All requirements for 8(a) competition, other than construction, should be forwarded to the district office servicing the geographical area in which the contracting office is located. All requirements for 8(a) construction competition should be forwarded to the district office servicing the geographical area in which all or the major portion of the construction is to be performed. All requirements, including construction, must be synopsisized through the GPE. For construction, the synopsis must include the geographical area of the competition set forth in the SBA's acceptance letter.

(c) *SBA acceptance.*

(1) Upon receipt of the contracting office's offering letter, SBA will determine whether to accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the contracting office in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within two working days of receipt if the contract is at or below the simplified acquisition threshold. The contracting office may grant an extension of these time periods, if requested by SBA.

(i) For acquisitions exceeding the simplified acquisition threshold, if SBA does not respond to an offering letter within ten working days, the contracting office may seek SBA's acceptance through the Associate Administrator for Business Development. The contracting office may assume that SBA has accepted the

requirement into the 8(a) program if it does not receive a reply from the Associate Administrator for Business Development within five calendar days of receipt of the contracting office's request.

(ii) For acquisitions not exceeding the simplified acquisition threshold, when the contracting office makes an offer to the 8(a) program on behalf of a specific 8(a) participant and does not receive a reply to its offering letter within two working days, the contracting office may assume the offer is accepted and proceed with award of an 8(a) contract.

(2) As part of the acceptance process, SBA will review the appropriateness of the NAICS code designation assigned to the requirement by the contracting officer.

(i) SBA will not challenge the NAICS code assigned to the requirement by the contracting officer if it is reasonable, even though other NAICS codes may also be reasonable.

(ii) If SBA and the contracting officer are unable to agree on a NAICS code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) program, appeal the contracting officer's determination to the head of the agency pursuant to 19.108-9, or appeal the NAICS code designation to the SBA Office of Hearings and Appeals under subpart C of 13 CFR part 134.

(3) For sole source 8(a) awards, if an appropriate match exists, SBA will advise the contracting officer whether it will participate in contract negotiations or whether SBA will authorize the contracting officer to negotiate directly with the identified 8(a) participant. Where SBA has delegated its contract execution functions to a contracting agency, SBA will also identify that delegation in its acceptance letter. For a joint venture, SBA will determine eligibility as part of its acceptance of a sole-source requirement and will approve the joint venture agreement prior to award in accordance with 13 CFR 124.513(e).

(i) *Sole source award where the contracting officer nominates a specific 8(a) participant.* SBA will determine whether an appropriate match exists where the contracting officer identifies a particular participant for a sole source award.

(A) Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the 8(a) participant recommended by the contracting officer, provided that the 8(a) participant complies with the requirements of 13 CFR 124.503(c)(1).

(B) If an appropriate match does not exist, SBA will notify the 8(a) participant and the contracting officer, and may then nominate an alternate 8(a) participant.

(ii) *Sole source award where the contracting officer does not nominate a specific 8(a) participant.* When a contracting officer does not nominate an 8(a) participant for performance of a sole source 8(a) contract, SBA will select an 8(a) participant for possible award from among two or more eligible and qualified 8(a) participants. The selection will be based upon relevant factors, including business development needs, compliance with competitive business mix requirements (if applicable), financial condition, management ability, technical capability, and whether award will promote the equitable distribution of 8(a) contracts. (For construction requirements see 13 CFR 124.503(d)(1)).

#### **19.108-5 Repetitive acquisitions.**

In order for repetitive acquisitions to be awarded through the 8(a) program, there must be separate offers and acceptances. This allows the SBA to determine—

- (a) Whether the requirement should be a competitive 8(a) award;
- (b) A nominated 8(a) participant's eligibility, and whether or not it is the same 8(a) participant that performed the previous contract;
- (c) The effect that contract award would have on the equitable distribution of 8(a) contracts; and
- (d) Whether the requirement should continue under the 8(a) program.

#### **19.108-6 Basic ordering agreements and blanket purchase agreements.**

(a) The contracting office must submit an offering letter for, and SBA must accept, each order under a basic ordering agreement (BOA) or a blanket purchase agreement (BPA) (see 12.201-1), in addition to the agency offering and SBA accepting the BOA or BPA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of orders issued under a specific BOA or BPA to exceed the competitive threshold amount in 19.108-7.

(c) Once an 8(a) participant's program term expires, the participant otherwise exits the 8(a) program, or becomes other than small for the NAICS code assigned under the BOA or the BPA, SBA will not accept new orders under the BOA or BPA for the participant.

## **19.108-7 Competitive 8(a) and sole source 8(a) policy.**

(a) *Competitive 8(a) policy.* An acquisition offered to the SBA under the 8(a) program must be awarded on the basis of competition limited to eligible 8(a) participants when—

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) participants will submit offers and that award can be made at a fair market price; and

(2) The anticipated total value of the contract, including options, will exceed \$8.5 million for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$5.5 million for all other acquisitions.

(b) *Above competitive thresholds.* Where an acquisition exceeds the competitive threshold (see paragraph (a)(2) of this section), the SBA may accept the requirement for a sole source 8(a) award only after the contracting officer has complied with the requirements for other than full and open competition in accordance with 6.103.

(c) *Prohibition on splitting requirements.* A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order to use 8(a) sole source procedures for award to a single firm.

(d) *Below competitive thresholds.*

(1) To ensure fair market pricing and to prepare 8(a) participants for competition, SBA has approved certain government-wide contracts for competition amongst the 8(a) contract-holders (see 19.111-2) at any dollar value, including below the competitive thresholds. Where an acquisition is below the competitive threshold (see paragraph (a)(2) of this section), contracting officers must first try conducting the acquisition as a competitive 8(a) order using these government-wide contracts before proceeding with a sole source 8(a) award. To determine whether SBA has provided approval for a particular government-wide contract, refer to the ordering procedures for that contract.

(2) The SBA Associate Administrator for Business Development may approve a contracting office's request for a competitive 8(a) award below the competitive thresholds when not using the contracts referenced in paragraph (d)(1). Such requests will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) participants are available for competition. In determining whether a request to compete below the threshold will be approved, the SBA Associate Administrator for Business Development will, in part, consider

the extent to which the contracting activity is supporting the 8(a) program on a noncompetitive basis. The agency may include recommendations for competition below the threshold in the offering letter or by separate correspondence to the SBA Associate Administrator for Business Development.

**19.108-8 Limitations on subcontracting and nonmanufacturer rule.**

(a) *Limitations on subcontracting.* To be awarded a contract or order under the 8(a) program, the 8(a) participant is required to perform—

(1) For services (except construction), at least 50 percent of the cost incurred for personnel with its own employees;

(2) For supplies or products (other than a procurement from a nonmanufacturer of such supplies or products), at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials);

(3) For general construction, at least 15 percent of the cost with its own employees (not including the cost of materials); and

(4) For construction by special trade contractors, at least 25 percent of the cost with its own employees (not including the cost of materials).

(b) *Compliance period for limitations on subcontracting.* An 8(a) contractor is required to comply with the limitations on subcontracting—

(1) For a contract under the 8(a) program, either by the end of the base term and then by the end of each subsequent option period or by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order competed exclusively among contractors who are 8(a) participants, by the end of the performance period for the order.

(c) *Waiver.* The applicable SBA District Director may waive the provisions in paragraph (b)(1) requiring a participant to comply with the limitations on subcontracting for each period of performance or for each order. Instead, the SBA District Director may permit the participant to subcontract in excess of the limitations on subcontracting where the SBA District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance.

(1) The 8(a) participant is required to provide the SBA District Director written assurance that the participant will ultimately comply with the requirements of this section

prior to contract completion. The contracting officer must review the written assurance and inform the 8(a) participant of their concurrence or nonconcurrence. The 8(a) participant can only submit the written assurance to the SBA District Director upon concurrence by the contracting officer.

(2) The contracting officer does not have the authority to waive the provisions of this section requiring an 8(a) participant to comply with the limitations on subcontracting for each period of performance or order, even if the agency has a Partnership Agreement with SBA.

(3) Where the 8(a) participant does not ultimately comply with the limitations on subcontracting by the end of the contract, SBA will not grant future waivers for the 8(a) participant.

(d) *Nonmanufacturer rule.* See 19.104-1(f) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

#### **19.108-9 SBA appeals.**

(a) The SBA Administrator may submit for determination to the agency head if the SBA and the contracting officer fail to agree on the decision to make a particular acquisition available for award under the 8(a) Program.

(b) The procedures at 19.102(f) apply to this section if there is disagreement between the contracting officer and the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) regarding the matters in paragraph (a).

(c) If the SBA appeal is denied, the decision of the agency head must specify the reasons for the denial. The decision must be made a part of the contract file.

#### **19.108-10 Contract clauses.**

(a) The contracting officer must insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using sole source procedures in 19.208-7(a)(1) and (2).

(b) The contracting officer must insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using sole source procedures in 19.208-7(a)(1) and (2).

(c) The contracting officer must insert the clause at 52.219-17, Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.208-1 and in sole source awards which utilize the alternative procedure in 19.208-7(a)(3).

(d) The contracting officer must insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Participants, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.208-1. Use the clause at 52.219-18 with its Alternate I when competition is to be limited to 8(a) participants within one or more specific SBA districts pursuant to 19.108-4(b).

(e) For contracts or orders resulting from this subpart, see 19.104-3(c) for use of 52.219-14, Limitations on Subcontracting, and 19.104-3(e) for use of 52.219-33, Nonmanufacturer Rule.

**19.108-11 Release requirements for non-8(a) procurement.**

(a) Once a requirement has been accepted by SBA into the 8(a) program, any follow-on requirements (see definition at 13 CFR 124.3) must remain in the 8(a) program unless—

(1) There is a mandatory source (see 8.101 through 8.103);

(2) The follow-on will be set aside under the HUBZone, SDVOSB, or WOSB programs;

or

(3) SBA agrees to release the requirement from the 8(a) program for a follow-on, non-8(a) procurement in accordance with 13 CFR 124.504(d) (see paragraph (b) of this section).

(b) To obtain release of a requirement from the 8(a) program, the contracting officer must make a written request to, and receive concurrence from, the SBA Associate Administrator for Business Development.

(c) (1) The written request to the SBA Associate Administrator for Business Development must indicate—

(i) Whether the agency has achieved its small disadvantaged business goal;

(ii) Whether the agency has achieved its HUBZone, SDVOSB, WOSB, or small business goal(s); and

(iii) Whether the requirement is critical to the business development of the 8(a) contractor that is currently performing the requirement.

(2) The requirement that a follow-on procurement must be released from the 8(a) program in order for it to be fulfilled outside the 8(a) program does not apply to task or delivery orders offered to and accepted into the 8(a) program, where the basic contract was not accepted into the 8(a) program.

### **19.109 Small business subcontracting plans.**

(a) (1) Except as stated in paragraph (b) of this section, 15 U.S.C. 637(d) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(i) In negotiated acquisitions, each solicitation of offers to perform a contract that is expected to exceed \$900,000 (\$2 million for construction of any public facility) and that has subcontracting possibilities, must require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award. For a multiple-award contract with more than one North American Industry Classification System (NAICS) code, see paragraph (a)(2) of this section.

(ii) In sealed bidding acquisitions, each invitation for bids to perform a contract that is expected to exceed \$900,000 (\$2 million for construction of any public facility) and that has subcontracting possibilities, must require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award. For a multiple-award contract with more than one NAICS code, see paragraph (a)(2) of this section.

(2) For a multiple-award contract with more than one NAICS code, the solicitation referenced in paragraphs (a)(1)(i) and (ii) of this section shall require the apparently successful offeror to submit an acceptable subcontracting plan for either the distinct portion(s) or category(ies) of their proposal for which the offeror is other than small or for the entirety of their proposal, at the offeror's discretion. When determining the need for a subcontracting plan, the contracting officer must consider the cumulative dollar value of the portion(s) or category(ies) of the offeror's proposal for which the offeror is other than small.

(b) Subcontracting plans (see paragraph (a) of this section) are not required—

(1) From small business concerns;

(2) For personal services contracts; or

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas.

(c) (1) The contracting officer must determine whether subcontracting possibilities exist by considering relevant factors such as—

(i) Whether firms engaged in the business of furnishing the types of items to be acquired usually contract for performance of part of the work or maintain sufficient in-house capability to perform the work;

(ii) Whether there are likely to be product prequalification requirements; and

(iii) Whether the firm can acquire any portion of the work with minimal or no disruption to performance (with consideration given to the time remaining until contract completion), and at fair market value, when a plan is required under 19.302-1.

(2) If it is determined that there are no subcontracting possibilities, the determination must include a detailed rationale, be approved at a level above the contracting officer, and placed in the contract file.

(d) In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer must consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small business and the socioeconomic categories to participate, and the burden placed on offerors.

(e) (1) Insert the clause at 52.219-8, Utilization of Small Business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold unless—

(i) A personal services contract is considered (see 37.104); or

(ii) The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas.

(2) (i) Insert the clause at 52.219-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed

\$900,000 (\$2 million for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns, unless the acquisition is set aside or is to be accomplished under the 8(a) program. When—

(A) Contracting by sealed bidding rather than by negotiation, use the clause with its Alternate I;

(B) Contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.109(d), use the clause with its Alternate II; or

(C) The contract action will not be reported in the Federal Procurement Data System pursuant to part 4, use the clause with its Alternate III.

(ii) Insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small Business Subcontracting Plan, or the clause with its Alternate I or II.

(f) (1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required, and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (f)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in paragraph (f)(2) of this section.

(2) Various approaches may be used in the development of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award-fee approach employing subjective evaluation criteria (see paragraph (f)(3) of this section). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (f)(2) of this section, the contracting officer may include small business, veteran-owned small business, service-disabled veteran-owned

small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontracting as one of the factors to be considered in determining the award fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer must not use the clause at 52.219-10, Incentive Subcontracting Program.

(g) The contracting officer must provide the SBA's procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) a reasonable period of time to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before the solicitation is issued.

(h) For evaluation requirements related to subcontracting plans, see FAR 19.206.

### **19.110 Price evaluation preference for HUBZone small business concerns.**

(a) Use the price evaluation preference for HUBZone small business concerns in acquisitions conducted using full and open competition. Do not use the preference—

(1) Where price is not a selection factor because in this situation a price evaluation preference would not be considered (e.g., architect/engineer acquisitions); or

(2) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).

(b) Insert the provision at 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations for acquisitions conducted using full and open competition.

(c) For use of clause 52.219-14, Limitations on Subcontracting, see the prescription at 19.104-3(c).

(d) For use of clause 52.219-33, Nonmanufacturer Rule, see the prescription at 19.104-3(e).

(e) For evaluation requirements related to the HUBZone price evaluation preference, see FAR 19.207.

### **19.111 Orders under multiple-award contracts.**

#### **19.111-1 Size.**

(a) When placing orders under multiple-award contracts with a single NAICS code, the contracting officer must assign the order the same NAICS code and corresponding size standard designated in the contract.

(b) When placing orders under multiple-award contracts with more than one NAICS code, the contracting officer must assign the order the NAICS code and corresponding size standard designated in the contract for the distinct portion or category against which the order is placed. If an order covers multiple portions or categories, select the NAICS code and corresponding size standard designated in the contract for the distinct portion or category that best represents the principal purpose of the order.

#### **19.111-2 Set-asides.**

(a) (1) In accordance with section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)(2)), contracting officers may, at their discretion, set aside orders placed under multiple-award contracts for any of the small business concerns identified in 19.000(a)(3).

(2) A contracting officer's decision to set aside or not set aside an order for small business concerns is an exercise of discretion granted to agencies and not a basis for protest. However, this does not preclude the filing of a protest of such an order if such a protest would otherwise be authorized on a separate basis recognized in accordance with 16.505(a)(10)(i).

(b) The contracting officer must comply with the specific program eligibility requirements identified in this part in addition to the ordering procedures for a multiple-award contract (for orders placed against the Federal Supply Schedules Program, see subpart 8.4; for orders placed under all other multiple-award contracts, see subpart 16.5).

#### **19.112 Reserves.**

(a) In accordance with section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)(3)) and 13 CFR 125.2(e)(4), contracting officers may, at their discretion when conducting multiple-award procurements using full and open competition, reserve one or more contract awards for any of the small business concerns identified in 19.000(a)(3), when market research indicates—

(1) A total set-aside is not feasible because there is no reasonable expectation of receiving offers that are competitive in terms of fair market prices, quality, and delivery from at least two responsible small business concerns identified in 19.000(a)(3), that can perform the entire requirement; and

(2) A partial set-aside is not feasible because—

(i) The contracting officer is unable to divide the requirement into distinct portions; or

(ii) There is no reasonable expectation that at least two responsible small business concerns identified in 19.000(a)(3) can perform any portion of the requirement competitively in terms of fair market price, quality, and delivery.

(b) A reserve will result in one of the following:

(1) One or more contract awards to any one or more types of small business concerns identified in 19.000(a)(3).

(2) In the case of a solicitation of a bundled requirement that will result in a multiple-award contract, an award to one or more small businesses with a Small Business Teaming Arrangement.

(c) The specific program eligibility requirements identified in this part apply.

(d) The limitations on subcontracting and the nonmanufacturer rule (see 52.219-14 and 52.219-33) do not apply to reserves at the contract level, but shall apply to orders that are set aside under 19.111-2.

(e) The contracting officer must insert the provision at 52.219-31, Notice of Small Business Reserve, in solicitations for multiple-award contracts that have reserves.

## **Subpart 19.2 - Evaluation and Award**

### **19.201 Small business size and socioeconomic status determination.**

#### **19.201-1 Representations.**

(a) (1) To be eligible for award as a small business concern, an offeror is required to represent in good faith—

(i) (A) That it meets the small business size standard corresponding to the North American Industry Classification System (NAICS) code identified in the solicitation; or

(B) For a multiple-award contract where there is more than one NAICS code assigned, that it meets the small business size standard for each distinct portion or category (e.g., line item numbers, Special Item Numbers (SINs), sectors, functional areas, or the equivalent) for which it submits an offer. If the small business concern submits an offer for the entire multiple-award contract, it must meet the size standard for each

distinct portion or category (e.g., line item number, SIN, sector, functional area, or equivalent); and

(ii) The Small Business Administration (SBA) has not issued a written determination stating otherwise pursuant to 13 CFR 121.1009.

(2) To be eligible for award as a small business concern under a socioeconomic program listed in this part, the small business concern has to be certified by SBA for that program (see 19.101(a)(2)(i)).

(b) (1) A joint venture may qualify as a small business concern if the joint venture complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b).

(2) A joint venture may qualify for an award under the socioeconomic programs as described in 19.105, 19.106, 19.107, and 19.108.

(c) An offeror is required to represent its size in writing to the contracting officer at the time of initial offer, (whether or not the offer includes price or the price is evaluated), including offers for—

(1) Basic ordering agreements (see part 16); and

(2) Blanket purchase agreements (BPAs) issued pursuant to part 12.

(d) To be eligible for an award of an order under a basic ordering agreement or a BPA issued pursuant to part 12 as a small business concern identified in 19.000(a)(3), the offeror must be a small business concern identified in 19.000(a)(3) at the time of award of the order.

(e) Multiple-award contract representations:

(1) A business that represents as a small business concern at the time of its initial offer for the contract (whether or not the offer includes price or the price is evaluated (see 13 CFR 121.404(a)(1)(iv)), is considered a small business concern for each order issued under the contract.

(2) A business that represents as a small business concern at the time of its initial offer for a distinct portion or category as set forth in paragraph (a)(1)(i)(B) is considered a small business concern for each order issued under that distinct portion or category.

(f) For requirements related to rerepresenting size after award, see FAR 19.301.

(g) The contracting officer must accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the

concern's small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning a specific representation must be referred to the SBA in accordance with 19.201-2.

(h) An offeror's representation that it is a small business is not binding on the SBA. If an offeror's small business status is challenged, the SBA will evaluate the status of the concern and make a determination, which will be binding on the contracting officer, as to whether the offeror is a small business. A concern cannot become eligible for a specific award by taking action to meet the definition of a small business concern after the SBA has determined that it is not a small business.

### **19.201-2 Protesting a small business representation or rerepresentation.**

(a) (1) The SBA regulations on small business size and size protests are found at 13 CFR part 121.

(2) An offeror, the contracting officer, SBA, or another interested party may protest the small business representation of an offeror in a specific offer for a contract. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or SBA. See 13 CFR 121.1001(a).

(b) Any time after offers are received by the contracting officer, or in the case of bids, opened, the contracting officer may question the small business representation of any offeror in a specific offer by filing a contracting officer's protest (see paragraph (c) of this section).

(c) (1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, or rerepresentation of a contractor, must promptly forward the protest to the SBA Government Contracting Area Director at the Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(2) The protest, or confirmation if the protest was initiated orally, must be in writing and must contain the basis for the protest with specific, detailed evidence to support the allegation that the offeror is not small. The SBA will dismiss any protest that does not contain specific grounds for the protest.

(3) The protest must include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The protest and any accompanying materials.

(ii) A copy of the size self-certification.

(iii) Identification of the applicable size standard.

(iv) A copy of or an electronic link to the solicitation and any amendments.

(v) The name, address, telephone number, email address, and fax number of the contracting officer.

(vi) Identification of the bid opening date or the date of notification provided to unsuccessful offerors.

(vii) The date the contracting officer received the protest.

(viii) A complete address and point of contact for the protested concern.

(d) In order to affect a specific solicitation, a protest must be timely. SBA's regulations on timeliness are contained in 13 CFR 121.1004. SBA's regulations on timeliness related to protests of disadvantaged status are contained in 13 CFR part 124, subpart B.

(1) To be timely, a protest by any concern or other interested party must be received by the contracting officer by the close of business of the fifth business day after—

(i) Bid opening for sealed bid acquisitions; or

(ii) Receipt of the special notification from the contracting officer (see 15.503(a)(2)) that identifies the apparently successful offeror for negotiated acquisitions, including—

(A) Partial set-asides and reserves of multiple-award contracts; and

(B) Orders that are set-aside under an unrestricted multiple-award contract (except for orders and blanket purchase agreements placed against a Federal Supply Schedule contract (see 8.4 and paragraph (d)(5) of this section)); or

(iii) Receipt of notification using other communication means when written notification is not required.

(2) A protest may be made orally if it is confirmed in writing and received by the contracting officer within the 5-day period or by letter postmarked no later than 1 business day after the oral protest.

(3) A protest may be made in writing if it is delivered to the contracting officer by hand, mail, facsimile, email, express or overnight delivery service.

(4) Except as provided in paragraph (d)(6) of this section, a protest filed by the contracting officer or SBA is always considered timely whether filed before or after award.

(5) A protest under a GSA Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals.

(6) A protest filed before bid opening, or notification to offerors of the selection of the apparent successful offeror, will be dismissed as premature by SBA.

(e) Upon receipt of a protest from or forwarded by the Contracting Office, the SBA will—

(1) Notify the contracting officer and the protester of the date it was received, and that the size of the concern being challenged is under consideration by the SBA; and

(2) Furnish to the concern whose representation is being protested a copy of the protest and a blank SBA Form 355, Application for Small Business Determination, by certified mail, return receipt requested.

(f) (1) Within 15 business days after receipt of a protest or request for a formal size determination or within any extension of time granted by the contracting officer the SBA Area Office will determine the size status of the challenged concern. The SBA Area Office will notify the contracting officer, the protester, and the challenged concern of its decision by a verifiable means, which may include facsimile, electronic mail, or overnight delivery service.

(2) Award may be made to a protested concern after the SBA Area Office has determined that the protested concern is an eligible small business or has dismissed all protests against it.

(3) If SBA's Office of Hearings and Appeals (OHA) subsequently overturns the Area Office's determination of eligibility or dismissal, and contract award has not been made, the contracting officer may apply the OHA decision to the procurement in question.

(g) (1) After receiving a protest involving an offeror being considered for award, the contracting officer must not award the contract until the SBA has made a size determination or 15 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award must not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) If SBA has not made a determination within 15 business days, or within any extension of time granted by the contracting officer, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government.

(3) SBA may, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA or, a final decision has not been rendered by the SBA Area Office or OHA.

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action. The contracting officer must forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and must notify the protester of this action.

(h) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by an SBA Government Contracting Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the Office of Hearings and Appeals, within the time limits and in strict accordance with the procedures contained in Subpart C of 13 CFR part 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If a post-award appeal is submitted to OHA within the time limits specified in Subpart C of 13 CFR part 134, the contracting officer must consider suspending contract performance until an SBA Judge decides the appeal. SBA will inform the contracting officer of its ruling on the appeal. SBA's decision, if received before award, will apply to the pending acquisition. If the contracting officer has made a written determination in accordance with (g)(1) or (2) of this section, the contract has been awarded, the SBA ruling is received after award, and OHA finds the protested concern to be ineligible for award, the contracting officer must terminate the contract unless termination is not in the best interests of the Government, in keeping with the circumstances described in the written determination. However, the contracting officer must not exercise any options or award further task or delivery orders.

(i) SBA will dismiss untimely protests. A protest that is not timely, even though received before award, must be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation the protest is not timely. A protest received by a contracting

officer after award of a contract must be forwarded to the SBA Government Contracting Area Office with a notation that award has been made.

(j) When a concern is found to be other than small under a protest concerning a size status rerepresentation made in accordance with the clause at 52.219-28, Postaward Small Business Program Rerepresentation, a contracting officer may permit contract performance to continue, issue orders, or exercise option(s), because the contract remains a valid contract.

### **19.201-3 Small disadvantaged business status.**

(a) The contracting officer may accept an offeror's representation that it is a small disadvantaged business (SDB) concern.

(b) The provision at 52.219-1, Small Business Program Representations is used to collect SDB data.

(c) A representation of SDB status on a Federal prime contract will be deemed a misrepresentation of SDB status if the firm does not meet the requirements of 13 CFR 124.1001.

(d) Any person or entity that misrepresents a firm's status as an SDB concern in order to obtain a contracting opportunity in accordance with section 8(d) of the Small Business Act, (15 U.S.C. 637(d)) will be subject to the penalties imposed by section 16(d) of the Small Business Act, (15 U.S.C. 645(d)), as well as any other penalty authorized by law.

(e) SBA may initiate the review of SDB status on any firm that has represented itself to be an SDB on a prime contract or subcontract to a Federal prime contract whenever it receives credible information calling into question the SDB status of the firm.

(f) Requests for an SBA review of SDB status may be forwarded to the Small Business Administration, in accordance with 13 CFR 124.1002(b).

(g) An SBA review of a subcontractor's SDB status differs from a formal protest.

### **19.201-4 Protesting a firm's status as a HUBZone small business concern.**

(a) *Definition.* As used in this section—

*Interested party* has the meaning given in 13 CFR 126.103.

(b) (1) For sole-source procurements, SBA or the contracting officer may protest the prospective contractor's certified HUBZone status; for all other procurements, SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's certified HUBZone status (see 13 CFR 126.800).

(2) The Director of SBA's Office of the HUBZone Program will determine whether the concern has certified HUBZone status. If SBA upholds the protest, SBA will remove the concern's HUBZone status in the Small Business Search (SBS). SBA's protest regulations are found in subpart H "Protests" at 13 CFR 126.800 through 126.805.

(c) Protests relating to small business size status are subject to the procedures of 19.201-2. An interested party seeking to protest both the small business size and HUBZone status of an apparent successful offeror shall file two separate protests. Protests relating to small business size status for the acquisition and the HUBZone eligibility requirements will be processed concurrently by SBA.

(d) (1) All protests must be in writing and must state all specific grounds for the protest (*i.e.*, why the protested concern did not meet the eligibility requirements at 13 CFR 126.200 at the time of the concern's application to SBA for certification as a HUBZone small business concern or at the time SBA certified or last recertified the concern as a HUBZone small business concern). Assertions that a protested concern is not a HUBZone small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b)).

(2) Protests filed against a HUBZone joint venture must state one or, if applicable, both of the following:

(i) Why the HUBZone small business party to the joint venture did not meet the eligibility requirements at 13 CFR 126.200 at the time of its application to SBA for certification or at the time SBA certified or last recertified the concern as a HUBZone small business concern.

(ii) Why the joint venture did not meet the requirements at 13 CFR 126.616 at the time of submission of its offer for a HUBZone contract.

(3) SBA will consider protests for HUBZone set-aside or sole-source service contracts or orders, if a HUBZone prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1, or if such subcontractor performs the primary and vital requirements of the contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.201-2 and 13 CFR 121.103(h)(3), which treats the pair as joint venturers for size determination purposes (the "ostensible subcontractor rule").

(e) *Submission of a protest.*

(1) An interested party shall submit its written protest to the contracting officer—

(i) For sealed bids—

(A) By the close of business on the fifth business day after bid opening; or

(B) By the close of business on the fifth business day from the date of identification of the apparent successful offeror, if the price evaluation preference was not applied at the time of bid opening;

(ii) For negotiated acquisitions, by the close of business on the fifth business day after receipt of the special notification from the contracting officer (see part 15) of the apparently successful offeror, including—

(A) Orders placed under multiple-award contracts where the contracting officer requested rerepresentation for the order (see 13 CFR 126.801(d)(1)); and

(B) Orders set aside for HUBZone small businesses under multiple-award contracts that are not partially or totally set-aside or reserved for HUBZone small business concerns (see 13 CFR 126.801(d)(1)), except for orders and blanket purchase agreements placed against a Federal Supply Schedule contract (see part 8); or

(iii) By the close of business on the fifth business day after receipt of notification using other communication means when written notification is not required.

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f) The contracting officer must forward all protests with a referral letter to the Director of SBA's Office of the HUBZone Program, by email to [hzprotests@sba.gov](mailto:hzprotests@sba.gov). The referral letter must include the following—

(1) The solicitation number;

(2) The contracting officer's name and contact information;

(3) The type of HUBZone contract (*i.e.*, sole-source, set-aside, full and open competition with a HUBZone price evaluation preference, or reserve for HUBZone small business concerns under a multiple-award contract);

(4) For a procurement conducted using full and open competition with a HUBZone price evaluation preference, whether the protester's opportunity for award was affected by the preference;

(5) For a HUBZone set-aside, whether the protester submitted an offer;

(6) Whether the protested concern was the apparent successful offeror;

(7) Whether the procurement was conducted using sealed bid or negotiated procedures;

(8) The bid opening date, if applicable;

(9) The date the protester was notified of the apparent successful offeror;

(10) The date the contracting officer received the protest;

(11) The date the protested concern submitted its initial offer or quote to the contracting officer; and

(12) Whether a contract has been awarded, and if so, the date of award and contract number.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.*

(1) After receiving a protest involving the apparent successful offeror's status as a HUBZone small business concern, the contracting officer must either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract if—

(A) SBA does not issue its decision within 15 business days after receipt of the protest; and

(B) The contracting officer determines in writing that there is an immediate need to award the contract and that waiting for SBA's determination will be disadvantageous to the Government.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(i) *After SBA decision.* The SBA will notify the contracting officer, the protester, and the protested concern of the SBA determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Administrator, Office of Government Contracting and Business Development(AA/GC&BD).

(1) If the contracting officer has withheld contract award and SBA has determined that the protested concern is an eligible HUBZone or dismissed all protests against the protested concern, the contracting officer may award the contract to the protested concern. If the AA/GC&BD subsequently overturns the initial determination or dismissal, the contracting officer may apply the AA/GC&BD decision to the procurement in question.

(2) If the contracting officer has withheld award and the HUBZone Program Director has determined that the protested concern is ineligible, and a timely AA/GC&BD appeal has not been filed, then the contracting officer must not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii)(B) of this section, awarded the contract, and the Director of SBA's Office of the HUBZone Program's ruling sustaining the protest is received after award—

(i) The contracting officer must either—

(A) Terminate the contract; or

(B) (1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any options or award further task or delivery orders under the contract.

(ii) SBA will remove the concern's designation as a certified HUBZone small business concern in the Small Business Search (SBS). The concern is not permitted to submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved; and

(iii) After SBA updates the concern's designation as a HUBZone small business in SBS, the contracting officer must update the Federal Procurement Data System (FPDS) to reflect the final decision of the HUBZone Program Director if no appeal is filed.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii)(B) of this section, awarded the contract, SBA has sustained the protest and determined that the concern is not a HUBZone small business, and a timely (AA/GC&BD) appeal has been filed, then the contracting officer must consider whether performance can be suspended until an (AA/GC&BD) decision is rendered.

(5) If the AA/GC&BD affirms the decision of the HUBZone Program Director, finding the protested concern is ineligible, and contract award has occurred—

(i) The contracting officer must either—

(A) Terminate the contract; or

(B) (1) Make a written determination that termination is not in the best interests of the Government; and

(2) Not exercise any options or award further task or delivery orders under the contract;

(ii) SBA will remove the concern's designation as a certified HUBZone small business concern in SBS. The concern is not permitted to submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or the AA/GC&BD finds the concern is eligible on appeal; and

(iii) After SBA updates the concern's designation as a HUBZone small business in SBS, the contracting officer must update FPDS to reflect the AA/GC&BD decision.

(6) A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for 90 calendar days from the date of the SBA final decision.

(j) *Appeals of HUBZone status determinations.* The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's AA/GC&BD. The AA/GC&BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any untimely appeal.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the HUBZone Program Director failed to consider.

(l) (1) The party appealing the decision must provide notice of the appeal to—

(i) The contracting officer; and

(ii) The protested HUBZone small business concern or the original protester, as appropriate.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the HUBZone Program Director's determination or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GC&BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. The AA/GC&BD's decision is the final decision.

**19.201-5 Protesting a firm's status as a service-disabled veteran-owned small business concern.**

(a) *Definition. Interested party*, as used in this section, has the meaning given in 13 CFR 134.1002(b).

(b) *General.*

(1) For sole source acquisitions, the contracting officer, the Department of Veterans Affairs (VA), or SBA may protest the apparently successful offeror's service-disabled veteran-owned small business (SDVOSB) status. For all other acquisitions, any interested party may protest the apparently successful offeror's SDVOSB status.

(2) SBA's protest regulations are found in 13 CFR 128.500 and 13 CFR part 134.

(c) Protests relating to small business size status are subject to the procedures of 19.201-2. An interested party seeking to protest both the small business size and SDVOSB status of an apparent successful offeror shall file two separate protests.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) OHA will consider protests challenging the SDVOSB status or the ownership and control of a concern if—

(i) For status protests, the protester presents evidence supporting the contention that the owner(s) cannot provide documentation from the VA to show

that they meet the definition of “service-disabled veteran” or “service-disabled veteran with a permanent and severe disability” as set forth in 13 CFR 128.102; or

(ii) For ownership and control protests, the protester presents evidence that the concern is not 51 percent owned and controlled by one or more service-disabled veterans. In the case of a veteran with a permanent and severe disability, the protester presents evidence that the concern is not controlled by the veteran, spouse, or permanent caregiver of such veteran; or

(iii) For set-aside or sole-source service contract or order ostensible subcontractor protests, the protester presents credible evidence of the alleged undue reliance on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1, or credible evidence that the small non-similarly situated entity is performing the primary and vital requirements of the contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.201-2, and 13 CFR 121.103(h)(3), which treats the pair as joint venturers for size determination purposes (the “ostensible subcontractor rule”); or

(iv) For joint venture protests, the protester presents evidence that the managing SDVOSB joint venture partner does not meet the requirements at 13 CFR 128.402.

(2) Assertions that a protested concern is not a SDVOSB concern, without setting forth specific facts or allegations, will not be considered by OHA (see 13 CFR 134.1005)

*(e) Protest by an interested party.*

(1) An interested party (except contracting officers should see paragraph (f)(1) of this section) shall submit its protest to the contracting officer—

(i) To be received by close of business on the fifth business day after bid opening for sealed bid acquisitions;

(ii) To be received by close of business on the fifth business day after receipt of the special notification from the contracting officer (see part 15) that identifies the apparently successful offeror for negotiated acquisitions, including—

(A) Orders placed under multiple-award contracts where the contracting officer requested rerepresentation for the order (see 13 CFR 134.1004(a)(3)(ii)); and

(B) Orders set aside for service-disabled veteran-owned small businesses under multiple-award contracts that are not partially or totally set aside or reserved for SDVOSB concerns (see 13 CFR 134.1004(a)(3)(i)), except for orders and blanket purchase agreements placed against a Federal Supply Schedule contract (see part 8);

(iii) To be received by close of business on the fifth business day after notification by the contracting officer of the intended awardee for an order that is set aside for SDVOSBs under a multiple-award contract that was not totally or partially set aside or reserved for SDVOSB concerns. This paragraph (e)(1)(iii) does not apply to an order issued against a Federal Supply Schedule (FSS) contract;

(iv) To be received by the close of the fifth business day after notification by the contracting officer of the intended awardee for a blanket purchase agreement that is set aside for SDVOSBs under a multiple-award contract that was not totally or partially set aside or reserved for SDVOSB concerns. This paragraph (e)(1)(iv) does not apply to a blanket purchase agreement issued under a FSS contract; or

(v) To be received by the close of business on the fifth business day after receipt of notification using other communication means when written notification is not required.

(2) Any protest received after the designated time limits is untimely, except—

(i) The VA or SBA may file an SDVOSB status protest at any time; and

(ii) The contracting officer, SBA, or VA may file an SDVOSB status protest at any time after the apparent awardee has been identified or after bid opening, whichever applies.

(f) *Forwarding protests to SBA.*

(1) The contracting officer must forward all protests to the U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third Street SW, Washington, DC 20416, or by email at [OHAfilings@sba.gov](mailto:OHAfilings@sba.gov), marked “Attn: SDVOSB Status Protest” (see 13 CFR 134.1004(c)).

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow OHA to determine timeliness and standing:

(i) The solicitation number (or an electronic link to or a paper copy of the solicitation).

(ii) The name, address, telephone number, and email address of the contracting officer.

(iii) Whether the contract was sole-source or set-aside.

(iv) Whether the protestor submitted an offer.

(v) Whether the protested concern was the apparent successful offeror.

(vi) When the protested concern submitted its initial offer that included price.

(vii) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable.

(ix) The date the contracting officer received the protest.

(x) The date the protestor received notification about the apparent successful offeror, if applicable.

(xi) Whether a contract has been awarded.

(g) *Notification by OHA.* OHA will notify the protestor, the protested concern, SBA's Director of Government Contracting (D/GC), SBA Counsel, and the contracting officer of the date OHA received the protest.

(h) *Before OHA decision.*

(1) After receiving a protest involving the apparent successful offeror's status as an SDVOSB concern, the contracting officer must either—

(i) Withhold award of the contract until OHA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before OHA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest. The contracting officer must notify OHA and SBA D/GC in writing of the determination and a copy must be included in the contract file.

(2) OHA will determine the merits of the status protest.

(3) OHA does not have a standard timeline for issuing decisions.

(i) *After OHA decision.* OHA will notify the contracting officer, the protester, and the protested concern of its decision. The decision is effective immediately and is final.

(1) If the contracting officer has withheld contract award and OHA has determined that the protested concern is an eligible SDVOSB or dismissed all protests against the protested concern, then the contracting officer may award the contract to the protested concern.

(2) If the contracting officer has withheld contract award, and OHA has sustained the protest and determined that the concern is not an SDVOSB, then the contracting officer must not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with paragraph (h)(1)(ii) of this section, the contract has been awarded, and the OHA decision to sustain the protest is received after award—

(i) The contracting officer must terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer must not exercise any options or award further task or delivery orders;

(ii) The contracting officer must update FPDS to reflect the final OHA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as an SDVOSB concern within 2 days of the OHA decision. SBA will update the concern's SDVOSB status in SAM if the concern fails to do so. The concern shall not submit an offer as a SDVOSB concern or an SDVOSB concern eligible under the SDVOSB Program, until the concern is designated as an SDVOSB by SBA in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov>.

(4) A concern found to be ineligible may not submit future offers as an SDVOSB concern until the concern is designated as an SDVOSB by SBA in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov>.

**19.201-6 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.**

(a) *Definition. Interested party*, as used in this section, has the meaning given in 13 CFR 127.102.

(b) (1) For sole source acquisitions, the contracting officer or SBA may protest the offeror's status as an economically disadvantaged women-owned small business (EDWOSB) concern or as a WOSB concern eligible under the WOSB Program. For all other acquisitions, an interested party (see 13 CFR 127.102) may protest the apparent successful offeror's EDWOSB or WOSB status.

(2) SBA's protest regulations are found in subpart F "Protests" at 13 CFR 127.600 through 127.605.

(c) Protests relating to small business size status are subject to the procedures of 19.201-2. An interested party seeking to protest both the small business size and WOSB or EDWOSB status of an apparent successful offeror shall file two separate protests.

(d) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens;

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women who are United States citizens, when it is in connection with an EDWOSB contract; or

(iii) For WOSB or EDWOSB set-aside or sole-source service contracts or orders, the protest presents evidence that the prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1, or a protest alleging that such subcontractor is performing the primary and vital requirements of a set-aside or sole-source WOSB or EDWOSB contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.201-2, and 13 CFR 121.103(h)(3), which treats the pair as joint venturers for size determination purposes (the "ostensible subcontractor rule").

(2) Assertions that a protested concern is not an EDWOSB or WOSB concern eligible under the WOSB Program, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 127.603(a)).

(e) *Protest by an interested party.*

(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening for sealed bid acquisitions;

(ii) To be received by the close of business by the fifth business day after receipt of the special notification from the contracting officer (see part 15) that identifies the apparently successful offeror for negotiated acquisitions including—

(A) Orders placed under multiple-award contracts where the contracting officer requested rerepresentation for the order (see 13 CFR 127.603(c)(1)); and

(B) Orders set aside for EDWOSB or WOSB concerns under multiple-award contracts that are not partially or totally set aside or reserved for EDWOSB or WOSB concerns (see 13 CFR 127.603(c)(1)), except for orders and blanket purchase agreements placed against a Federal Supply Schedule contract (see part 8); or

(iii) To be received by the close of business on the fifth business day after receipt of notification using other communication means when written notification is not required.

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(f) (1) The contracting officer must forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting by email at [wosbprotest@sba.gov](mailto:wosbprotest@sba.gov).

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number or electronic link to or a paper copy of the solicitation.

(ii) The name, address, telephone number, email address, and facsimile number of the contracting officer.

(iii) Whether the protestor submitted an offer.

(iv) Whether the protested concern was the apparent successful offeror.

(v) When the protested concern submitted its offer.

(vi) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vii) The bid opening date, if applicable.

(viii) The date the contracting officer received the protest.

(ix) The date the protestor received notification about the apparent successful offeror, if applicable.

(x) Whether a contract has been awarded.

(g) SBA will notify the protestor and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.*

(1) After receiving a protest involving the apparent successful offeror's status as an EDWOSB or WOSB concern eligible under the WOSB Program, the contracting officer must either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination

must be provided to the SBA Director for Government Contracting and a copy must be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by OHA pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then the contracting officer must not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling is received after award, and no OHA appeal has been filed, then—

(i) The contracting officer must terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer must not exercise any options or award further task or delivery orders;

(ii) The contracting officer must update the FPDS to reflect the final SBA decision; and

(iii) SBA will remove the concern's designation in the Small Business Search (SBS) as an EDWOSB or WOSB concern eligible under the WOSB Program. The concern shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, contract award has occurred, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a

timely OHA appeal has been filed, then the contracting officer must consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible, then—

(i) The contracting officer must terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer must not exercise any options or award further task or delivery orders;

(ii) The contracting officer must update the FPDS to reflect OHA's decision; and

(iii) SBA will remove the concern's designation in SBS as an EDWOSB or WOSB concern eligible under the WOSB Program. The concern shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

*(j) Appeals of EDWOSB or WOSB concerns eligible under the WOSB Program status determinations.*

(1) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, the protester, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with OHA.

(2) OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal.

(3) See subpart G “Rules of Practice for Appeals From Women-Owned Small Business Concerns (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests” at 13 CFR 134.701 through 134.715 for SBA's appeals regulations.

*(k) The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the EDWOSB concern or WOSB concern eligible under the WOSB program protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, by email at [wosbprotest@sba.gov](mailto:wosbprotest@sba.gov);

(3) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, or the original protester, as appropriate; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, or email at [OPLService@sba.gov](mailto:OPLService@sba.gov).

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested EDWOSB concern or WOSB concern eligible under the WOSB program. The OHA decision is the final agency decision and is binding on the parties.

#### **19.201-7 Protesting an 8(a) participant's eligibility or size status.**

(a) The eligibility of an 8(a) participant for a sole source or competitive 8(a) requirement may not be challenged by another 8(a) participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest (see 13 CFR 124.517).

(b) The size status of an 8(a) participant nominated for an 8(a) sole source contract may not be protested by another 8(a) participant or any other party.

(c) The size status of the apparent successful offeror for competitive 8(a) awards may be protested. The filing of a size status protest is limited to—

(1) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

(2) The contracting officer; or

(3) The SBA District Director in either the district office serving the geographical area in which the contracting activity is located or the district office that services the apparent successful offeror, or the Associate Administrator for Business Development.

(d) Protests of competitive 8(a) awards shall follow the procedures at 19.201-2. For additional information, refer to 13 CFR 121.1001.

(e) If the size status of an 8(a) participant nominated for award of an 8(a) sole source contract is called into question, a request for a formal size determination may be submitted to SBA pursuant to 13 CFR 121.1001(b)(2)(ii) by—

(1) The 8(a) participant nominated for award of the particular sole source contract;

(2) The contracting officer who has been delegated SBA's 8(a) contract execution functions, where applicable, or the SBA program official with authority to execute the 8(a) contract;

(3) The SBA District Director in the district office that services the 8(a) participant or the Associate Administrator for Business Development; or

(4) The SBA Inspector General.

(f) SBA's Government Contracting Area Director will issue a formal size determination within 15 business days, if possible, after SBA receives the request for a formal size determination.

(g) An appeal of an SBA size determination shall follow the procedures at 19.201-2.

### **19.202 Encouraging small business responses.**

Contracting officers must provide to any small business concern, upon its request—

(a) A copy of solicitations with respect to any contract to be awarded;

(b) The name and telephone number of an agency contact to answer questions related to the prospective contract; and

(c) Adequate citations to each major Federal law or agency rule with which the business concern must comply in performing the contract, other than laws or agency rules with which the small business must comply even when doing business with entities other than the Government.

### **19.203 Equal low bids.**

(a) In the event of equal low bids (see 14.408-6), make awards first to small business concerns that are also labor surplus area concerns, and second to small business concerns that are not also labor surplus area concerns.

(b) Insert the provision at 52.219-2, Equal Low Bids, in solicitations when contracting by sealed bidding and—

(1) The contract is for supplies to be delivered or services to be performed in the United States or its outlying areas; or

(2) The contracting officer has applied this part in accordance with 19.000(b)(1)(ii).

### **19.204 Certificate of Competency.**

A Certificate of Competency (COC) is the certificate SBA issues stating that, for the purpose of receiving and performing a specific Government contract, the holder is responsible with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting.

(a) The COC program empowers SBA to certify to Government contracting officers regarding all elements of responsibility of any small business concern to receive and perform a specific Government contract. The COC program does not extend to questions concerning regulatory requirements that other Federal agencies impose and enforce.

(b) The COC program applies to all Government acquisitions except for 8(a) sole-source awards. If a contracting officer determines an apparent successful small business offeror to be nonresponsible, the contracting officer must refer that small business to SBA for a possible COC, even if the next acceptable offer is from a small business. Contracting officers, including those located overseas, must comply with this section for U.S. small business concerns.

(c) When a solicitation requires a small business to comply with the limitations on subcontracting, a contracting officer's finding that a small business cannot comply with the limitation must be treated as an element of responsibility and must be subject to the COC process.

(d) When a contracting officer determines and documents that an apparent successful small business offeror lacks one or more elements of responsibility listed in the introductory text of this section (for sureties see 28.101-3(f) and 28.203-1(e)), the contracting officer must—

(1) Withhold contract award; and

(2) Refer the matter to the appropriate SBA Government Contracting Area Office (Area Office) serving the area where the offeror's headquarters is located, in accordance with agency procedures.

(e) The referral must include—

(1) A notice that a small business concern has been determined to be nonresponsible, specifying the element(s) of responsibility the contracting officer found lacking; and

(2) If applicable, a copy of the following:

(i) Solicitation.

(ii) Final offer submitted by the apparent successful offeror whose responsibility is at issue.

(f) The contracting officer must withhold award for a period of 15 business days following receipt by the appropriate SBA Area Office of a referral that includes all required documentation.

(g) In order to determine whether to issue or deny a COC, SBA conducts a review in accordance with 13 CFR 125.5. At the completion of the COC review process, SBA will notify the concern and the contracting officer that the COC is denied or is being issued.

(h) If new information causes the contracting officer to determine that the concern referred to the SBA is actually responsible to perform the contract, and award has not already been made under paragraph (j) of this section, the contracting officer must—

- (1) Reverse the determination of nonresponsibility;
- (2) Notify the SBA of this action;
- (3) Withdraw the referral; and
- (4) Proceed to award the contract.

(i) SBA COCs are final with respect to all elements of responsibility of prospective small business contractors. An SBA-certified concern must not be required to meet any other requirements of responsibility. Where SBA issues a COC, the contracting officer may decide not to award to that offeror for reasons unrelated to responsibility.

(j) The contracting officer must award the contract to another appropriately selected and responsible offeror if SBA has not issued a COC within 15 business days after receiving the referral.

### **19.205 Evaluating and awarding set-asides.**

(a) If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm.

(b) If the contracting officer receives no acceptable offers from responsible small business concerns for a small business set-aside under 19.104, the set-aside must be withdrawn and the requirement, if still valid, must be resolicited on an unrestricted basis.

(c) Except as authorized by law, do not award a contract as a small business or socioeconomic status category set-aside if the cost to the awarding agency exceeds the fair market price. The fair market price is the price achieved in accordance with the reasonable price guidelines in 15.404-1(b).

(d) (1) If, before award of a contract involving a small business set-aside, the contracting officer considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the small business set-aside.

(2) The contracting officer must prepare a written statement supporting any withdrawal or modification of a small business set-aside and include it in the contract file.

(3) If a small business set-aside acquisition is not awarded, the determination to set the acquisition aside is automatically dissolved. The required supplies and/or services for which no award was made may be acquired by using other methods, as appropriate.

## **19.206 Evaluating small business subcontracting plans.**

### **19.206-1 Types of subcontracting plans.**

(a) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan (see 19.001) that contains all the elements required by the clause at 52.219-9, Small Business Subcontracting Plan, except goals. Master subcontracting plans shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master subcontracting plans. Changes required to update master subcontracting plans are not effective until approved by the contracting officer. A master subcontracting plan, when incorporated in an individual plan, shall apply to that contract throughout the life of the contract.

(b) An individual subcontracting plan contains all the elements required by the clause at 52.219-9, Small Business Subcontracting Plan, and separate statements and goals based on total subcontract dollars for the basic contract and for each option.

(c) A commercial subcontracting plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. The subcontracting goals established for a commercial plan shall include all indirect costs with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. Once a contractor's commercial plan has been approved, the Government must not require another subcontracting plan from the same contractor while the plan remains in effect, as

long as the product or service being provided by the contractor continues to meet the definition of a commercial product or commercial service. The contractor shall—

(1) Submit the commercial plan to either the first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or, if the contractor has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer must negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the contractor's fiscal year for all Government contracts in effect during that period;

(2) Submit a new commercial plan, 30 working days before the end of the Contractor's fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;

(3) When the new commercial plan is approved, provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan; and

(4) Comply with the reporting requirements stated in the clause at 52.219-9, Small Business Subcontracting Plan, by submitting one SSR that includes all indirect costs, except as described in paragraph (d) of this section, in SPR, for all contracts covered by its commercial plan. This report will be monitored in SPR by the agency that approved the plan. The report shall be submitted within 45 days after the end of the Government's fiscal year.

#### **19.206-2 Elements of the subcontracting plan.**

(a) Each subcontracting plan required under 19.109(a) must include the elements listed in paragraph (d) of the clause at 52.219-9, Small Business Subcontracting Plan.

(b) According to 15 U.S.C. 657r(a), a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that awards a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, if the protégé is a covered territory business or the protégé's principal office is located in the Commonwealth of Puerto Rico.

#### **19.206-3 Reviewing the subcontracting plan.**

The contracting officer must review the subcontracting plan for adequacy, ensuring that it includes the required information, goals, and assurances (see paragraph (d) of the clause at 52.219-9).

(a) No detailed standards apply to every subcontracting plan. Instead, the contracting officer must consider each plan in terms of the circumstances of the particular acquisition, including—

(1) Previous involvement of small business concerns as prime contractors or subcontractors in similar acquisitions;

(2) Proven methods of involving small business concerns as subcontractors in similar acquisitions; and

(3) The relative success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by contractors.

(b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the required elements (see paragraph (d) of the clause at 52.219-9), the contracting officer must advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan that includes the required elements by the deadline, the bidder is ineligible for award. If the plan, although responsive, indicates the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small Business Concerns, the contracting officer may find the bidder nonresponsible.

(c) In negotiated acquisitions, the contracting officer must determine whether the plan is acceptable based on the negotiation of each of the required elements of the plan (see paragraph (d) of the clause at 52.219-9). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror's good faith efforts to use small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors as much as possible. The contracting officer must take particular care to ensure that the offeror has not submitted unreasonably low goals to minimize exposure to liquidated damages and to avoid the administrative burden of demonstrating good faith efforts. Also, the contracting officer should pay close attention to identifying steps that, if taken, would be considered a good faith effort (see 19.302-2(b) and (c)). Do not negotiate increased goals if a higher goal will significantly increase the Government's cost or make it hard to meet acquisition objectives. An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business concerns.

(d) To determine whether a proposed subcontracting plan is acceptable, the contracting officer should:

(1) Find information about, and evaluate, the offeror's past performance in awarding subcontracts for the same or similar products or services to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance and consider the performance of other contractors on similar efforts.

(2) According to 15 U.S.C. 637(d)(4)(F)(iii), ensure that the goals offered are attainable in relation to—

(i) The subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(ii) The pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(iii) The actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(3) Ensure that the subcontracting goals are consistent with the offeror's certified cost or pricing data or data other than certified cost or pricing data.

(4) Evaluate the offeror's make-or-buy policy or program to ensure that it does not conflict with the offeror's proposed subcontracting plan and is in the Government's interest. If the contract involves products or services that are particularly specialized or not generally available in the commercial market, consider the offeror's current capacity to perform the work and the possibility of reduced subcontracting opportunities.

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(6) Advise the offeror of available sources of information on potential small business, veteran-owned small business, service-disabled veteran-owned small business,

HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offerors proposed goals are questionable, the contracting officer must emphasize that the information should be used to develop realistic and acceptable goals.

(7) Obtain advice and recommendations from the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) and the agency small business specialist.

(e) In making an award that requires a subcontracting plan, the contracting officer must:

(1) Consider the contractor's compliance with the subcontracting plans submitted on previous contracts as a factor to determine contractor responsibility.

(2) Assure that a subcontracting plan was submitted when required.

(3) Notify the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) of the opportunity to review the proposed contract (including the plan and supporting documentation). The notice must be issued in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations to the contracting officer. Failure of the representative to respond in a reasonable period of time shall not delay contract award.

(4) Determine any fee that may be payable if an incentive is used in conjunction with the subcontracting plan.

(5) Ensure that an acceptable plan is incorporated into and made a material part of the contract.

(f) Letter contracts and similar undefinitized contracts, which would otherwise meet the requirements of 19.109(a), must contain at least a preliminary basic plan addressing the requirements of paragraph (d) of the clause at 52.219-9 and in such cases require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

### **19.207 Evaluating offers using the HUBZone price evaluation preference.**

The contracting officer must give offers from HUBZone small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except—

(a) Offers from HUBZone small business concerns that have not waived the evaluation preference; or

(b) Otherwise successful offers from small business concerns.

## **19.208 Evaluating and awarding under the 8(a) Program.**

### **19.208-1 Procedures for competitive 8(a).**

(a) Offers must be solicited from those sources identified in accordance with 19.108-4(c).

(b) The SBA will determine the eligibility of the apparent successful offeror. Eligibility is based on section 8(a) program criteria (see 13 CFR 124.501(g) and 19.208-6(c)).

(1) In either negotiated or sealed bid competitive 8(a) acquisitions SBA will determine the eligibility of the apparent successful offeror and advise the contracting office within 5 working days after receipt of the contracting office's request for an eligibility determination.

(i) If SBA determines that the apparent successful offeror is ineligible, the contracting officer will then send to SBA the identity of the next highest evaluated offeror for an eligibility determination. The process is repeated until SBA determines that an identified offeror is eligible for award.

(ii) If the contracting officer believes that the apparent successful offeror (or the offeror SBA has determined eligible for award) is not responsible to perform the contract, the contracting officer must refer the matter to SBA for Certificate of Competency consideration under 19.204.

(2) For a two-step design-build procurement, an 8(a) participant must be eligible for award under the 8(a) program on the initial date for receipt of phase one offers specified in the solicitation (see 13 CFR 124.507(d)(3)).

(3) In any case in which an 8(a) participant is determined to be ineligible, SBA will notify the 8(a) participant of that determination.

(c) Any party with information questioning the eligibility of an 8(a) participant to continue participation in the 8(a) program or for the purposes of a specific 8(a) award may submit such information to the SBA in accordance with 13 CFR 124.112(c).

(d) (1) SBA does not certify joint ventures, as entities, into the 8(a) program.

(2) A contracting officer may consider a joint venture for contract award. SBA does not approve joint ventures for competitive awards (but see 13 CFR 124.501(g) for SBA's determination of participant eligibility).

## **19.208-2 Contract negotiation.**

### *(a) Sole source.*

(1) The SBA may not accept for negotiation a sole-source 8(a) contract that exceeds \$30 million unless the requesting agency has completed a justification in accordance with the requirements of 6.104.

(2) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources.

(3) The SBA should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting officer to negotiate directly with the 8(a) participant. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award.

(4) An 8(a) participant must represent that it is a small business in accordance with the size standard corresponding to the NAICS code assigned to the contract.

(5) A concern must be a current participant in the 8(a) program at the time of an 8(a) sole-source award.

(6) An 8(a) participant owned by an Alaska Native Corporation, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation may not receive an 8(a) sole-source award that is a follow-on contract to an 8(a) contract, if the predecessor contract was performed by another 8(a) participant (or former 8(a) participant) owned by the same Alaska Native Corporation, Indian Tribe, Native Hawaiian Organization, or Community Development Corporation. See 13 CFR 124.109 through 124.111.

*(b) Competitive.* In competitive 8(a) acquisitions, including follow-on 8(a) acquisitions, subject to part 15, the contracting officer conducts negotiations directly with the competing 8(a) participants. Conducting competitive negotiations among eligible 8(a) participants prior to SBA's formal acceptance of the acquisition for the 8(a) program may be grounds for the SBA's not accepting the acquisition for the 8(a) program (see 19.108-4).

## **19.208-3 Pricing the 8(a) contract.**

(a) The contracting officer must price the 8(a) contract in accordance with subpart 15.4. If required by subpart 15.4, the SBA shall obtain certified cost or pricing data from the 8(a) contractor.

If the SBA requests audit assistance to determine the proposed price to be fair and reasonable in a sole source acquisition, the contracting activity must furnish it to the extent it is available.

(b) An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.

(c) If requested by the SBA, the contracting officer must make available the data used to estimate the fair market price within 10 working days.

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.208-8.

#### **19.208-4 Estimating the fair market price.**

(a) The contracting officer must estimate the fair market price of the work to be performed by the 8(a) contractor.

(b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer must use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including certified cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

(c) In estimating a fair market price for a repeat purchase, the contracting officer must consider prices for similar products and services, recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

#### **19.208-5 Preaward survey.**

The contracting officer should request a preaward survey of the 8(a) participant whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the participant's ability to perform, the contracting officer must refer the matter to SBA for Certificate of Competency consideration under 19.204.

#### **19.208-6 Effect of exiting the 8(a) program on eligibility for award.**

(a) Except as provided in paragraph (c) of this section, when a contractor exits the 8(a) program, it is no longer eligible to receive new 8(a) contracts.

(b) If an 8(a) contractor is suspended from the program (see 13 CFR 124.305), it may not receive any new 8(a) contracts unless the head of the contracting agency makes a determination that it is in the best interest of the Government to issue the award and SBA adopts that determination.

(c) A contractor that has completed its term of participation in the 8(a) program may be awarded a competitive 8(a) contract if it was an 8(a) participant eligible for award of the contract on the initial date specified for receipt of offers contained in the solicitation, and if the contractor continues to meet all other applicable eligibility criteria (see 13 CFR 124.507(d)).

(d) SBA's regulations on exiting the 8(a) program are found at 13 CFR 124.301 through 124.305, and 13 CFR 124.507(d).

#### **19.208-7 Preparing the contracts.**

(a) *Sole source.*

(1) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer must use the Standard Form 26 as the award form, except for construction contracts, in which case the Standard Form 1442 must be used as required in 36.701(a).

(2) The contracting officer must prepare the contract that the SBA will award to the 8(a) participant in accordance with agency procedures, as if awarding the contract directly to the 8(a) participant, except for the following:

(i) The award form must cite 41 U.S.C. 3304(a)(5) or 10 U.S.C. 3204(a)(5) (as appropriate) as the authority for use of other than full and open competition.

(ii) Appropriate clauses must be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.

(iii) The following items shall be inserted by the SBA—

(A) The SBA contract number.

(B) The effective date.

(C) The typed name of the SBA's contracting officer.

(D) The signature of the SBA's contracting officer.

(E) The date signed.

(iv) The SBA will obtain the signature of the 8(a) contractor prior to signing and returning the prime contract to the contracting officer for signature. The SBA will make every effort to obtain signatures and return the contract, and any subsequent bilateral modification, to the contracting officer within a maximum of 10 working days.

(3) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in paragraphs (a) and (b) of this subsection, use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document must contain the information in paragraphs (a)(2)(i), (ii), and (iii) of this subsection. Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(i) Agency acquisition office, prime contract number, name of agency contracting officer and lines for signature, date signed, and effective date.

(ii) The SBA office, the SBA contract number, name of the SBA contracting officer, and lines for signature and date signed.

(iii) Name and lines for the 8(a) contractor's signature and date signed.

(4) For acquisitions not exceeding the simplified acquisition threshold, the contracting officer may use the alternative procedures in paragraph (a)(3) of this subsection with the appropriate simplified acquisition forms.

(b) *Competitive.*

(1) The contract will be prepared in accordance with 14.408-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(i) The agency contracting activity, prime contract number, name of agency contracting officer, and lines for signature, date signed, and effective date.

(ii) The SBA office, the SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(2) The process for obtaining signatures shall be as specified in paragraph (a)(2)(iv) of this section.

### **19.208-8 SBA appeals.**

(a) The SBA Administrator may submit the following matters for determination to the agency head if the SBA and the contracting officer fail to agree on them:

(1) A contracting officer's decision to reject a specific 8(a) participant for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) program.

(2) The terms and conditions of a proposed 8(a) contract, including the contracting officer's NAICS code designation and estimate of the fair market price.

(b) The procedures at 19.102(f) apply to this section if there is disagreement between the contracting officer and the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) regarding the matters in paragraph (a).

(c) If the SBA appeal is denied, the decision of the agency head must specify the reasons for the denial, including the reasons why the selected participant was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

## **Subpart 19.3 - Postaward**

### **19.301 Small business size rerepresentations.**

(a) A contractor that represented itself as a small business concern before contract award must rerepresent its size status in accordance with the clause at 52.219-28, Postaward Small Business Program Rerepresentation, for the North American Industry Classification System (NAICS) code(s) in the contract 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 the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, 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 date specified in the contract for exercising any option thereafter.

(b) A contractor must rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract. For multiple-award contracts where there is more than one NAICS code assigned, the contractor is required to rerepresent its size status for each NAICS code assigned to the contract.

(c) After a contractor rerepresents it is other than small in accordance with 52.219-28, the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements. Agencies should issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation.

(d) A change in size status does not change the terms and conditions of the contract. However, the contracting officer may require a subcontracting plan for a contract containing 52.219-9, Small Business Subcontracting Plan, if a prime contractor's size status changes from small to other than small as a result of a size rerepresentation (see 19.109(c)(3)).

(e) A contractor that represented itself as other than small before contract award may, but is not required to, rerepresent its size status when—

(1) The conditions in paragraph (a) of this section apply; and

(2) The contractor qualifies as a small business concern under the applicable size standard in effect at the time of its rerepresentation.

## **19.302 Small business subcontracting plans.**

### **19.302-1 Getting a plan after award.**

(a) (1) The contracting officer must require the contractor to submit a subcontracting plan for the contract if—

(i) A contract modification causes the value of a contract without a subcontracting plan to exceed the subcontracting plan threshold (see 19.109(a)); and

(ii) The contracting officer determines that subcontracting opportunities exist.

(2) For a multiple-award contract with more than one NAICS code, the modification referenced in paragraph (a)(1) of this section must require the contractor to submit an acceptable subcontracting plan for either the distinct portion(s) or category(ies) of the contract for which the contractor is other than small or for the entirety of their contract, at the contractor's discretion. When determining the need for a subcontracting plan, the contracting officer must consider the cumulative dollar value of the portion(s) or category(ies) of the contract for which the contractor is other than small.

(3) See 19.109 for guidance on which contracts are exempt and how to determine if subcontracting opportunities exist.

(b) (1) If a subcontracting plan is required by paragraph (a) of this section or in accordance with 19.301(d), incorporate into the contract the clause at 52.219-9, Small Business Subcontracting Plan, with its Alternate IV.

(2) Insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in contracts containing the clause at 52.219-9, Small Business Subcontracting Plan, with its Alternate IV.

(c) If the contracting officer adds a subcontracting plan to the contract due to a modification as required by paragraph (a) of this section or as a result of a size rerepresentation (see 19.301(d)), the subcontracting goals apply from the date of incorporation of the subcontracting plan into the contract. The contractor's achievements must be reported on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(d) A contract may not have more than one subcontracting plan. However, a contracting officer may establish separate subcontracting goals for each order under an indefinite-delivery, indefinite-quantity contract. When a contract modification exceeds the subcontracting plan threshold (see 19.109(a)) or an option is exercised, the goals of an existing subcontracting plan shall be amended to reflect any new subcontracting opportunities not envisioned at the time of contract award. These goal changes do not apply retroactively.

### **19.302-2 Compliance with the plan.**

(a) The contracting officer must monitor the prime contractor's compliance with its subcontracting plan by ensuring that the contractor submits subcontracting reports in the SRP

within 45 days after the report ending date (e.g., by November 14th for the fiscal year ended September 30th).

(1) In order to be eligible as a subcontractor under a subcontracting plan, a concern is required to represent itself as a small business or small disadvantaged business or be certified by SBA as a veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or woman-owned small business.

(i) To represent itself as a small business or small disadvantaged business, a concern must meet the appropriate definition in 2.101.

(ii) (A) Unless the prime contractor has reason to question the representations, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business or small disadvantaged business, if the subcontractor represents that the representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract; or

(B) Unless the prime contractor has reason to question the representation, it may accept a subcontractor's representations of its size and socioeconomic status as a small business or small disadvantaged business in the System for Award Management (SAM) if—

(1) The subcontractor is registered in SAM; and

(2) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate, and complete as of the date of the offer for the subcontract.

(3) The prime contractor may not require that the subcontractor register in SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iii) A prime contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(iv) The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1001 through 121.1008. Protests challenging the

socioeconomic status of a HUBZone small business concern must be filed in accordance with 13 CFR 126.801.

(2) (i) In accordance with 43 U.S.C. 1626, the following procedures apply:

(A) Subcontracts awarded to an ANC or Indian tribe count toward the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or SBA certification status of the ANC or Indian tribe.

(B) If one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, then the ANC or Indian tribe is required to designate the appropriate contractor(s) to receive credit for the subcontract toward its small business and small disadvantaged business subcontracting goals.

(1) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(2) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe is required to designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(3) The ANC or Indian tribe is required to give a copy of the written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(4) If the contracting officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contracting officer will consider the contractor that awarded the subcontract to the ANC or Indian tribe the designated contractor.

(ii) A contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status of the ANC or Indian tribe unless an

interested party challenges its status or the contracting officer has independent reason to question its status. In the event of a challenge of a representation of an ANC or Indian tribe, the interested parties shall follow the procedures in part 26.

(3) As authorized by 15 U.S.C. 637(d)(12), agencies may credit certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the DoD Mentor-Protégé Program as if they were subcontract awards to a protégé firm for the purpose of determining whether the mentor firm meets the applicable goals under any subcontracting plan entered into with any executive agency. However, the mentor-protégé agreement must have been approved by the Director, Small Business Programs of the cognizant DoD military department or defense agency, before developmental assistance costs may be credited against subcontract goals. A list of approved agreements may be obtained at <https://business.defense.gov/Programs/Mentor-Protége-Program/>

(b) The contracting officer must assess whether the prime contractor made a good faith effort to comply with its small business subcontracting plan.

(1) If, at completion of the basic contract or any option, a contractor has failed to comply with the requirements of its subcontracting plan, which includes meeting its subcontracting goals, the contracting officer must review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no such indication is found, the contracting officer must document the file accordingly.

(2) If the contracting officer decides, according to paragraph (b)(1) of this section, that the contractor failed to make a good faith effort to comply with its subcontracting plan, 15 U.S.C. 637(d)(9) states that the contractor is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that the contractor must pay liquidated damages. Accordingly, the contracting officer must initiate action to assess liquidated damages.

(i) The contracting officer must give the contractor written notice under the clause at 52.219-16, Liquidated Damages—Subcontracting Plan. The notice must—

(A) Specify the material breach and indicate that it may be included in the contractor's past performance rating;

(B) Advise the contractor of the possibility that it may have to pay liquidated damages to the Government;

(C) Give the contractor an opportunity to respond to the notice (within 15 working days or longer, as necessary) to show the good faith efforts it made before the contracting officer issues the final decision; and

(D) Specify that the contractor's failure to respond may be taken as an admission that no valid explanation exists.

(ii) If, after consideration of all the pertinent data and the contractor's response to the notice in paragraph (b)(2)(i) of this section, the contracting officer finds that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer must issue a final decision to the contractor to that effect, require the contractor to pay liquidated damages, and state the amount to pay. The contracting officer's final decision must state that the contractor has the right to appeal under the clause in the contract entitled Disputes. The contracting officer must follow procedures in the clause at 52.219-16, Liquidated Damages—Subcontracting Plan.

(iii) The amount of damages attributable to the contractor's failure to comply must be equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal.

(iv) Liquidated damages must be in addition to any other remedies that the Government may have.

(c) (1) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort. The contracting officer may consider any of the following, though not all inclusive, to be indicators of a good faith effort:

(i) Breaking out work to be subcontracted into economically feasible units, as appropriate, to facilitate small business participation.

(ii) Conducting market research to identify potential small business subcontractors through all reasonable means, such as searching SAM, posting notices or solicitations on SBA's SUBNet, participating in business matchmaking events, and attending preproposal conferences.

(iii) Soliciting small business concerns as early in the acquisition process as practicable to allow them sufficient time to submit a timely offer for the subcontract.

(iv) Providing interested small businesses with adequate and timely information about plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract.

(v) Negotiating in good faith with interested small businesses.

(vi) Directing small businesses that need additional assistance to SBA.

(vii) Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services.

(viii) Utilizing the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations.

(ix) Participating in a formal mentor-protégé program with one or more small business protégés that results in developmental assistance to the protégés.

(x) Although failing to meet the subcontracting goal in one socioeconomic category, exceeding the goal by an equal or greater amount in one or more of the other categories.

(xi) Fulfilling all of the requirements of the subcontracting plan.

(2) When considered in the context of the contractor's total effort in accordance with its plan, the contracting officer may consider any of the following, though not all inclusive, to be indicators of a failure to make a good faith effort:

(i) Failure to attempt through market research to identify, contact, solicit, or consider for contract award small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns, through all reasonable means including outreach, industry days, or the use of Federal systems such as SBA's Dynamic Small Business Search or SUBNet systems.

(ii) Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan.

(iii) Failure to submit an acceptable ISR, or the SSR, using the SPR, or as provided in agency regulations, by the report due dates specified in 52.219-9, Small Business Subcontracting Plan.

(iv) Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flowdown requirements.

(v) Adoption of company policies or documented procedures that have as their objectives the frustration of the objectives of the plan.

(vi) Failure to pay small business subcontractors in accordance with the terms of the contract with the prime contractor.

(vii) Failure to correct substantiated findings from Federal subcontracting compliance reviews or participate in subcontracting plan management training offered by the Government.

(viii) Failure to provide the contracting officer with a written explanation if the contractor fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work.

(ix) Falsifying records of subcontract awards to small business concerns.

(d) With respect to commercial plans approved under the clause at 52.219-9, Small Business Subcontracting Plan, the contracting officer that approved the plan must—

(1) Perform the functions of the contracting officer under this subsection on behalf of all agencies with contracts covered by the commercial plan;

(2) Determine whether or not the goals in the commercial plan were achieved and, if they were not achieved, review all available information for an indication that the contractor has not made a good faith effort to comply with the plan, and document the results of the review;

(3) If a determination is made to assess liquidated damages, in order to calculate and assess the amount of damages, the contracting officer must ask the contractor to provide—

(i) Contract numbers for the Government contracts subject to the plan;

(ii) The total Government sales during the contractor's fiscal year; and

(iii) The amount of payments made under the Government contracts subject to that plan that contributed to the contractor's total sales during the contractor's fiscal year; and

(4) When appropriate, assess liquidated damages on the Government's behalf, based on the pro rata share of subcontracting attributable to the Government contracts. A copy of the contracting officer's final decision assessing liquidated damages must be provided to other contracting officers with contracts subject to the commercial plan.

(5) Every contracting officer with a contract that is subject to a commercial plan shall include in the contract file a copy of the approved plan and a copy of the final decision assessing liquidating damages, if applicable.

(e) The contracting officer must assess the prime contractor's written explanation concerning its failure to use a small business concern in the performance of the contract in the same scope, amount, and quality used in preparing and submitting the bid or proposal, if applicable.

### **19.302-3 Other postaward responsibilities.**

After a contract or contract modification containing a subcontracting plan is awarded or an existing subcontracting plan is amended, the contracting officer must do the following:

(a) Notify the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA area office where the contract will be performed.

(b) Forward a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA area office where the contractor's headquarters is located.

(c) Give to the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) a copy of—

(1) Any subcontracting plan submitted in response to a sealed bid solicitation; and

(2) The final negotiated subcontracting plan that was incorporated into a negotiated contract or contract modification.

(d) Notify the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.102(b)) of the opportunity to review subcontracting plans in connection with contract modifications.

(e) Forward a copy of each plan, or a determination that there is no requirement for a subcontracting plan, to the cognizant contract administration office.

(f) Agencies shall assign responsibilities for monitoring subcontract reports for anomalies, discrepancies, and errors.

### **19.303 8(a) Program contracts.**

#### **19.303-1 Contract administration.**

(a) The contracting officer must assign contract administration functions, as required, based on the location of the 8(a) contractor (see Federal Directory of Contract Administration Services Components, available via the Internet at <https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml>).

(b) The agency must distribute copies of the contract(s) in accordance with part 4. All contracts and modifications, if any, must be distributed to both the SBA and the 8(a).

(c) To the extent consistent with the contracting activity's capability and resources, 8(a) contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(d) For 8(a) contracts exceeding 5 years including options, the contracting officer must verify in SBS or SAM that the concern is an SBA-certified 8(a) participant no more than 120 days prior to the end of the fifth year of the contract. If the concern is not an SBA-certified 8(a) participant, the contracting officer must not exercise the option (see 13 CFR 124.521(e)(2)).

(e) An 8(a) contract, whether in the base or an option year, must be terminated for convenience if the 8(a) contractor to which it was awarded transfers ownership or control of the firm or if the contract is transferred or novated for any reason to another firm, unless the Administrator of the SBA waives the requirement for contract termination (13 CFR 124.515). The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the requirement for termination is permitted only if the 8(a) contractor's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control, except in the case of death or incapacity where the waiver must be submitted within 60 calendar days after such an occurrence. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, the

contracting officer must take action immediately to preserve the option of waiving the termination requirement. The contracting officer must determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer must immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head must either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer must terminate the contract for convenience upon receipt of a written request by the SBA. This requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

### **19.303-2 Exiting the 8(a) program.**

When a contractor exits the 8(a) program, it remains under contractual obligation to complete existing contracts, and any priced options that may be exercised.

### **19.303-3 Indefinite-delivery contracts.**

(a) Separate offers and acceptances are not required for individual orders under multiple-award contracts (including the Federal Supply Schedules managed by GSA, multi-agency contracts or Governmentwide acquisition contracts, or indefinite-delivery, indefinite-quantity (IDIQ) contracts) that have been set aside for exclusive competition among 8(a) contractors, and the individual order is to be competed among all 8(a) contract holders. SBA's acceptance of the original contract is valid for the term of the contract. Offers and acceptances are required for individual orders under multiple-award contracts that have not been set aside for exclusive competition among 8(a) contractors.

(b) The contracting officer may issue an order on a sole source basis when—

(1) The multiple-award contract was set aside for exclusive competition among 8(a) participants;

(2) The order has an estimated value less than or equal to the dollar thresholds set forth at 19.108-7(a)(2); and

(3) The offering and acceptance procedures at 19.108-4(b) and (c) are followed.

(c) An 8(a) contractor may continue to accept new orders under the contract, even if it exits the 8(a) program, or becomes other than small for the NAICS code(s) assigned to the contract.

(d) Agencies may continue to take credit toward their prime contracting small disadvantaged business or small business goals for orders awarded to 8(a) contractors, even after the contractor's 8(a) program term expires, the contractor otherwise exits the 8(a) program, or the contractor becomes other than small for the NAICS code(s) assigned under the 8(a) contract. However, if an 8(a) contractor rerepresents that it is other than small for the NAICS code(s) assigned under the contract in accordance with 19.301 or, where ownership or control of the 8(a) contractor has changed and SBA has granted a waiver to allow the contractor to continue performance (see 13 CFR 124.515), the agency may not credit any subsequent orders awarded to the contractor towards its small disadvantaged business or small business goals.

# Part 52 - Solicitation Provisions and Contract Clauses

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## **52.219 [Reserved]**

### **52.219-1 Small Business Program Representations.**

As prescribed in 19.101(a)(2)(ii)(A), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (DEVIATION DEC 2025)

(a) *Definitions.* As used in this provision-

*Economically disadvantaged women-owned small business (EDWOSB) concern* means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

*HUBZone small business concern* means a small business concern that meets the requirements described in [13 CFR 126.200](#), is certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Small Business Search (SBS) ([13 CFR 126.103](#)).

*Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program* means an SDVOSB concern that is designated in the System for Award Management (SAM) as certified by the Small Business Administration (SBA) in accordance with 13 CFR 128.300.

*Service-disabled veteran-owned small business (SDVOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to SDVOSB concerns eligible under the SDVOSB Program.

*Small business concern*—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (b) of this provision.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

*Small disadvantaged business concern* means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by one or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States, and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraph (1) of this definition.

*Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127) means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

(b) (1) The North American Industry Classification System (NAICS) code for this acquisition is \_\_\_\_\_ *[insert NAICS code]*.

(2) The small business size standard is \_\_\_\_\_ *[insert size standard]*.

(3) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce (*i.e.*, nonmanufacturer), is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

*(c) Representations.*

(1) The offeror represents as part of its offer that—

(i) it  is,  is not a small business concern; or

(ii) It  is,  is not a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.*]

(2) [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents as part of its offer that it  is,  is not a women-owned small business concern.

(3) *Women-owned small business (WOSB) joint venture eligible under the WOSB Program.* The offeror represents as part of its offer that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.*]

(4) *Economically disadvantaged women-owned small business (EDWOSB) joint venture.* The offeror represents as part of its offer that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.*]

(5) *SDVOSB joint venture eligible under the SDVOSB Program.* [*Complete only if the offeror is certified as a SDVOSB concern.*] The offeror represents as part of its offer that it  is,  is not a SDVOSB joint venture eligible under the SDVOSB Program that complies with the requirements of 13 CFR 128.402. [*The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.*]

(6) *HUBZone joint venture eligible under the HUBZone Program.* [Complete only if the offeror is a HUBZone small business concern.] The offeror represents, as part of its offer, that it  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.] Each HUBZone small business concern participating in the HUBZone joint venture must be certified as a HUBZone concern.

(d) *Notice.* Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, will be—

- (1) Punished by imposition of fine, imprisonment, or both;
- (2) Subject to administrative remedies, including suspension and debarment; and
- (3) Ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

*Alternate I* [Reserved]

*Alternate II* (Mar 2023). As prescribed in 19.3101(a)(2)(ii)(B), substitute the following paragraphs (b) and (c)(1) for paragraphs (b) and (c)(1) of the basic provision:

(b)

(1) The North American Industry Classification System (NAICS) codes and corresponding size standards for this acquisition are as follows; the categories or portions these NAICS codes are assigned to are specified elsewhere in the solicitation:

<b>NAICS Code</b>	<b>Size standard</b>
_____	_____
_____	_____
_____	_____

[Contracting Officer to insert NAICS codes and size standards].

(2) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce (*i.e.*, nonmanufacturer), is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

*(c) Representations.*

(1) The Offeror shall represent its small business size status for each one of the NAICS codes assigned to this acquisition under which it is submitting an offer.

<b>NAICS Code</b>	<b>Small business concern (yes/no)</b>
_____	_____
_____	_____
_____	_____

[Contracting Officer to insert NAICS codes.]

**52.219-2 Equal Low Bids.**

As prescribed in 19.203(b), insert the following provision:

EQUAL LOW BIDS (DEVIATION DEC 2025)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

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(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

## 52.219-3 Notice of HUBZone Set-Aside or Sole-Source Award.

As prescribed in 19.105-4(a), insert the following clause:

NOTICE OF HUBZONE SET-ASIDE OR SOLE-SOURCE AWARD (DEVIATION DEC 2025)

(a) *Definitions.* *HUBZone small business concern*, as used in this clause, means a small business concern, certified by the Small Business Administration (SBA), that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA (13 CFR 126.103).

(b) *Applicability.* This clause applies only to-

(1) Contracts that have been set aside or awarded on a sole-source basis to, HUBZone small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns; and

(3) Orders set aside for HUBZone small business concerns under multiple-award contracts as described in 8.4 and 16.5

(c) *General.*

(1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(d) *Joint venture.* A joint venture may be considered a HUBZone concern if—

(1) At least one party to the joint venture is a HUBZone small business concern and complies with 13 CFR 126.616(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business party or parties to the joint venture must be more than administrative functions.

(End of clause)

## **52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.**

As prescribed in 19.110(b), insert the following provision:

NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (DEVIATION DEC 2025)

(a) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except-

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(b) *Waiver of evaluation preference.* A HUBZone small business concern may choose to waive the evaluation preference. If the concern waives the preference, the factor will be added to its offer for evaluation purposes.

Offeror choose to waive the evaluation preference.

(c) *Joint venture.* A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business parties to the joint venture must be more than administrative functions.

(End of provision)

## **52.219-5 [Reserved]**

## **52.219-6 Notice of Total Small Business Set-Aside.**

As prescribed in 19.104-3(a), insert the following clause:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (DEVIATION DEC 2025)

(a) *Definition. Small business concern*, as used in this clause—

(1) 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 size standards in this solicitation.

(2) *Affiliates*, as used in paragraph (a)(1) of this clause, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) *Applicability*. This clause applies only to-

(1) Contracts that have been set aside for small business concerns; and

(2) Orders set aside for small business concerns under multiple-award contracts as described in 8.4 and 16.5.

(c) *General*.

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(End of clause)

*Alternate I* (Mar 2020). As prescribed in 19.104-3(a), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *General*.

(1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

## **52.219-7 Notice of Partial Small Business Set-Aside.**

As prescribed in 19.104-3(b), insert the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (NOV 2020)

(a) *Definition*.

*Small business concern*, as used in this clause—

(1) 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 size standards in this solicitation.

(2) *Affiliates*, as used in paragraph (a)(1) of this clause, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) *Applicability*. This clause applies only to contracts that have been partially set aside for small business concerns.

(c) *General*.

(1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns identified in 19.000(a)(3). Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of the requirement.

(2) Small business concerns may submit offers and compete for the non-set-aside portion and the set-aside portion.

(d) The Offeror shall—

[Contracting Officer check as appropriate.]

- Submit a separate offer for each portion of the solicitation for which it wants to compete (i.e. set-aside portion, non-set-aside portion, or both); or
- Submit one offer to include all portions for which it wants to compete.

(e) *Partial set-asides of multiple-award contracts*.

(1) Small business concerns will not compete against other than small business concerns for any order issued under the part or parts of the multiple-award contract that are set aside.

(2) Small business concerns may compete for orders issued under the part or parts of the multiple-award contract that are not set aside, if the small business concern received a contract award for the non-set-aside portion.

(End of clause)

*Alternate I* (Mar 2020) . As prescribed in 19.104-3(b), add the following paragraph (f) to the basic clause:

(f) Notwithstanding paragraph (c) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

## **52.219-8 Utilization of Small Business Concerns.**

As prescribed in 19.109(e), insert the following clause:

UTILIZATION OF SMALL BUSINESS CONCERNS (DEVIATION DEC 2025)

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

*HUBZone small business concern* means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Small Business Search (SBS) and the System for Award Management (SAM).

*Service-disabled veteran-owned small business (SDVOSB) concern* means an SDVOSB concern that meets the requirements described in 13 CFR 128.300, is certified by SBA, and is designated by SBA as an SDVOSB concern in SBS and SAM.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.

*Small disadvantaged business (SDB) concern* means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent of which is owned and controlled (as defined at 13 CFR 124.105) by-

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding the threshold at 13 CFR 124.104(c)(2) after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

*Veteran-owned small business (VOSB) concern* means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

*Women-owned small business (WOSB) concern* means a small business concern-

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women;

(2) Whose management and daily business operations are controlled by one or more women; and

(3) That is certified by SBA or an approved third- party certifier in accordance with 13 CFR 127.300 and is designated by SBA as a WOSB concern in SBS and SAM.

(b) It is the policy of the United States that small business concerns, VOSB concerns, SDVOSB concerns, HUBZone small business concerns, SDB concerns, and WOSB concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, VOSB concerns, SDVOSB concerns, HUBZone small business concerns, SDB concerns, and WOSB concerns.

(c) (1) A joint venture qualifies as a small business concern if—

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program. (See 13 CFR 125.9(d).)”; and

(2) A joint venture qualifies as a HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

(d) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the as may be necessary to determine the extent of the Contractor's compliance with this clause.

(e) (1) Unless the Contractor has reason to question the representation, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business or SDB, if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) Unless the Contractor has reason to question the representation, it may accept a subcontractor's representations of its size and socioeconomic status as a small business or SDB in the System for Award Management (SAM) if the subcontractor—

(i) Is registered in SAM; and

(ii) Represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require that the subcontractor register in SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) A contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern, VOSB, SDVOSB, or WOSB concern is certified by SBA by checking SAM or SBS at <https://search.certifications.sba.gov/>.

(End of clause)

## **52.219-9 Small Business Subcontracting Plan.**

As prescribed in 19.109(e)(2)(i), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DEVIATION MAR 2026)

(a) This clause does not apply to small business concerns.

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

*Alaska Native Corporation (ANC)* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

*Commercial plan* means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

*Commercial product* means a product that satisfies the definition of "commercial product" in Federal Acquisition Regulation (FAR) 2.101.

*Commercial service* means a service that satisfies the definition of "commercial service" in FAR 2.101.

*Indian tribe* means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

*Individual subcontracting plan* means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

*Master subcontracting plan* means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

*Reduced payment* means a payment for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

*Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

*Subcontracting Plan Reporting (SPR)* means the electronic subcontracting reporting system at SAM.gov for small business subcontracting program reporting.

*Total contract dollars* means the final anticipated dollar value, including the dollar value of all options.

*Untimely payment* means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

- (c) (1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business (VOSB), service-disabled veteran-owned

small business (SDVOSB), HUBZone small business, small disadvantaged business (SDB), and women-owned small business (WOSB) concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The Contracting Officer will include the subcontracting plan in and make it a part of the resultant contract. The Offeror shall negotiate the subcontracting plan within the timeframe specified by the Contracting Officer. If the Offeror fails to submit and negotiate the subcontracting plan, then the Offeror will not be eligible for award of a contract.

(2) (i) Unless the Contractor has reason to question the representations, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business or SDB, if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) Unless the Contractor has reason to question the representations, it may accept a subcontractor's representations of its size and socioeconomic status as a small business or SDB in the System for Award Management (SAM) if—

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require that the subcontractor register in SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) A contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or SDB status.

(v) In order to be eligible as a VOSB, SDVOSB, HUBZone small business, or WOSB concern, subcontractor under a subcontracting plan, the small business must be certified by the Small Business Administration (SBA) as that socioeconomic status. SBA certifications are in the Small Business Search (SBS) website at <https://search.certifications.sba.gov/>.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, VOSB, SDVOSB, HUBZone small business, SDB, and WOSB concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also

be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), an Offeror that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) and awards a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, if the protégé is a covered territory business or the protégé's principal office is located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

(i) Count subcontracts awarded to an ANC or Indian tribe toward the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or SBA certification status of the ANC or Indian tribe; and

(ii) If one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, then the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contracting Officer will consider the Contractor that awarded the subcontract to the ANC or Indian tribe the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts, including all indirect costs except as described in paragraph (g) of this clause, to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with–

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, VOSB, SDVOSB, HUBZone small business, SDB, and WOSB concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns, including entities that are treated as small business concerns by statute for certain purposes ( e.g., ANCs, see 13 CFR 125.3(b)(2))) that receive subcontracts in excess of the applicable threshold specified in FAR 19.109(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will–

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so the Government can determine the extent of compliance by the Contractor with the subcontracting plan;
- (iii) Include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;
- (iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the SPR. The reports shall provide information on subcontract awards to small business

concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using SPR;

(vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the SPR when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small business, VOSB, SDVOSB, HUBZone small business, SDB, and WOSB concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, indicating-

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if-

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in paragraph (d)(12) of this clause. The Contractor shall submit the written explanation to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the Contractor will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the Contracting Officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business,

HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Small Business Search (SBS) at <https://search.certifications.sba.gov/>.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial product or commercial service. A Contractor with a

commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in SPR for all contracts covered by its commercial plan. A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. This report shall be monitored in SPR by the agency that approved the plan. This report shall be submitted within 45 days after the end of the Government's fiscal year.

(h) The Contracting Officer will consider prior compliance of the Offeror with other such subcontracting plans under previous contracts in determining the responsibility of the Offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR 19.109(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract is awarded under FAR part 12, Acquisition of Commercial Products and Commercial Services, or when the subcontractor provides a commercial product or commercial service subject to the clause at FAR 52.244-6, Subcontracts for Commercial Products and Commercial Services, under a prime contract.

(k) The Contracting Officer will consider failure of the Contractor or subcontractor to comply in good faith with the clause of this contract entitled "Utilization Of Small Business Concerns," or an approved plan required by this clause, a material breach of the contract and may consider the failure in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based SPR. Do not include purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor in these reports. Treat subcontract awards by affiliates as subcontract awards by the Contractor. Limit subcontract award data reported by the Contractor and subcontractors to awards made to their immediate next-tier subcontractors. The Contractor and its subcontractors cannot take credit for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or SDB credit from an ANC or Indian tribe. Include in these reports only subcontracts involving performance in the United States or its outlying areas, with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 45 days of contract completion. Reports are due 45 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When notified of any anomaly, discrepancy, or error in the *ISR*, the Contractor shall submit a corrected report within 30 days of receiving the notice.

(ii) (A) When a subcontracting plan contains separate goals for the base period of the contract and each option, the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.302-1 or 19.301(e), the Contractor shall report its achievements on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, include these costs in this report.

(iv) In the case of a subcontract with a subcontracting plan, the responsibility to monitor the *ISR* belongs to the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual subcontracting plans–

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each

executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR 19.109(a), and the contract contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by November 14 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The responsibility to monitor SSRs in SPR, including SSRs submitted by subcontractors with subcontracting plans, belongs to the Government agency awarding the prime contracts unless stated otherwise in the contract.

*(ii) Reports submitted under a commercial plan-*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The responsibility to monitor SSRs for commercial plans belongs to the Government agency that approved the commercial plan.

(End of clause)

*Alternate I* (DEVIATION MAR 2026). As prescribed in 19.109(e)(2)(i)(A), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) (1) The apparently low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business, small disadvantaged business (SDB), and women-owned small business (WOSB) concerns. If the bidder is submitting an individual subcontracting plan, the plan must separately address subcontracting with small

business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The Contracting Officer shall include the plan in and make it a part of the resultant contract. The apparently low bidder shall submit the subcontracting plan within the timeframe specified by the Contracting Officer. If the Bidder fails to submit the subcontracting plan, then the Bidder shall not be eligible for the award of a contract.

*Alternate II* (DEVIATION MAR 2026). As prescribed in 19.109(e)(2)(i)(B), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) (1) The Offeror shall include with its proposal, submitted in response to this solicitation, a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business, small disadvantaged business (SDB), and women-owned small business (WOSB) concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The Contracting Officer shall include the plan in and make it a part of the resultant contract. The Offeror shall negotiate the subcontracting plan within the timeframe specified by the Contracting Officer. If the Offeror fails to submit and negotiate a subcontracting plan, the Offeror shall not be eligible for award of a contract.

*Alternate III* (DEVIATION MAR 2026). As prescribed in 19.109(e)(2)(i)(C), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause:

- (d) (10) Assurances that the Offeror will—
- (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Contractor with the subcontracting plan;
  - (iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the SPR. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and

Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the SPR.

(l) The Contractor shall submit a SF 294. The Contractor shall submit SSRs using the web-based SPR. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan. For Contractors the report shall be submitted to the Contracting Officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 45 days of contract completion. Reports are due 45 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When notified of any anomaly, discrepancy, or error in the report, the Contractor shall submit a revised report within 30 days of receiving the notice of report rejection.

(ii) (A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.206-1(b), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to FAR 19.302-1 or 19.301(d), the Contractor's achievements must be reported in the report on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(2) SSR.

(i) *Reports submitted under subcontracting contract plans.*

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g., plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor and/or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR 19.109(a), and the contract contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by November 14, for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor is required to submit a revised SSR within 30 days of receiving the notice of report rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The responsibility to monitor SSRs in the SPR, including SSRs submitted by subcontractors with subcontracting plans, belongs to the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan.*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within 45 days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The responsibility to monitor SSRs for commercial plans belongs to the agency that approved the commercial plan.

*Alternate IV* (DEVIATION MAR 2026). As prescribed in 19.302-1(b)(1), substitute the following paragraphs (c)(1) and (d) for paragraphs (c)(1) and (d) of the basic clause:

(c) (1) The Contractor, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business, small disadvantaged business (SDB), and women-owned small business (WOSB) concerns. If the Contractor is submitting an individual subcontracting plan, the plan shall separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The Contracting Officer shall incorporate the subcontracting plan into the contract. The Contractor shall negotiate the subcontracting plan within the timeframe specified by the Contracting Officer. The subcontracting plan does not apply retroactively.

(d) The Contractor's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted and as a percentage of total planned subcontracting dollars, for the use of small business, VOSB, SDVOSB, HUBZone small business, SDB, and WOSB concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Contractor shall include all subcontracts that contribute to contract performance and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), a Contractor that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) and awards a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, if the

protégé is a covered territory business or the protégé's principal office is located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

(i) Count subcontracts awarded to an ANC or Indian tribe toward the subcontracting goals for small business and SDB concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) If one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, then the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract toward its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contracting Officer will consider the Contractor that awarded the subcontract to the ANC or Indian tribe the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Contractor's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan, including all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns; (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business; (v) Total dollars planned to be subcontracted to HUBZone small business concerns; (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). The Contractor may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Contractor included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the Contractor who will administer the Contractor's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Contractor will make to assure that small business, VOSB, SDVOSB, HUBZone small business, SDB, and WOSB concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Contractor will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Contractor will require all subcontractors (except small business concerns, including entities that are treated as small business concerns by statute for certain purposes (e.g., ANCs, see 13 CFR 125.3(b)(2))) that receive subcontracts in excess of the applicable threshold specified in FAR 19.302-1(a)(1) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Contractor will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so the Government can determine the extent of compliance by the Contractor with the subcontracting plan;

(iii) Include subcontracting data for each order when reporting subcontracting achievements for an indefinite-delivery, indefinite-quantity contract with an individual subcontracting plan where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the SPR. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or SSR using SPR;

(vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Contractor's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the SPR when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Contractor's efforts to locate small business, VOSB, SDVOSB, HUBZone small business, SDB, and WOSB concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact–

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through–

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Contractor to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Contractor will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the proposal for the modification, in the same or greater scope, amount, and quality used in preparing and submitting the modification proposal. Responding to a request for a quote does not constitute use in preparing a proposal. The Contractor used a small business concern in preparing the proposal for a modification if–

(i) The Contractor identifies the small business concern as a subcontractor in the proposal or associated small business subcontracting plan to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Contractor used the small business concern's pricing or cost information or technical expertise in preparing the proposal, where there is written

evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work when the modification is executed.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in paragraph (d)(12) of this clause. The Contractor shall submit this written explanation to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to the payment to or utilization of a subcontractor.

(15) Assurances that the Contractor will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the Contracting Officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

## **52.219-10 Incentive Subcontracting Program.**

As prescribed in 19.109(f)(1), insert the following clause:

### INCENTIVE SUBCONTRACTING PROGRAM (DEVIATION DEC 2025)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

(b) If the Contractor exceeds its subcontracting goals for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in performing this contract, it will receive \_\_\_\_\_ [*Contracting Officer to insert the appropriate number between 0 and 10*] percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are unilateral decisions made solely at the discretion of the Government.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.4 of the Federal Acquisition Regulation.

(End of clause)

## **52.219-11 Special 8(a) Contract Conditions.**

As prescribed in 19.108-10(a), insert the following clause:

SPECIAL 8(A) CONTRACT CONDITIONS (JAN 2017)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements, delegate to the \_\_\_\_\_ *[insert name of contracting agency]* the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the \_\_\_\_\_ *[insert name of contracting agency]* shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the \_\_\_\_\_ *[insert name of contracting agency]*.

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.

(f) To notify the \_\_\_\_\_ *[insert name of contracting agency]* Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of clause)

## **52.219-12 Special 8(a) Subcontract Conditions.**

As prescribed in 19.108-10(b), insert the following clause:

SPECIAL 8(A) SUBCONTRACT CONDITIONS (OCT 2019)

(a) The Small Business Administration (SBA) has entered into Contract No. \_\_\_\_\_ *[insert number of contract]* with the \_\_\_\_\_ *[insert name of contracting agency]* to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The \_\_\_\_\_ [insert name of subcontractor], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. \_\_\_\_\_ [insert number of contract] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements, for the administration of this subcontract to the \_\_\_\_\_ [insert name of contracting agency] with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will notify the \_\_\_\_\_ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the \_\_\_\_\_ [insert name of contracting agency].

(End of clause)

### **52.219-13 Notice of Set-Aside of Orders.**

As prescribed in 19.104-3(d), insert the following clause:

NOTICE OF SET-ASIDE OF ORDERS (MAR 2020)

(a) The Contracting Officer may set aside orders for the small business concerns identified in 19.000(a)(3).

(b) The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in 19.000(a)(3) and the applicable small business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in 19.000(a)(3).

(End of clause)

*Alternate I* [Reserved]

### **52.219-14 Limitations on Subcontracting.**

As prescribed in 19.104-3(c), insert the following clause:

LIMITATIONS ON SUBCONTRACTING (DEVIATION DEC 2025)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Definition. Similarly situated entity*, as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) *Applicability*. This clause applies only to—

(1) Contracts that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(3) Contracts that have been awarded on a sole-source basis in accordance with sections 19.105, 19.106, 19.107, and 19.108;

(4) Orders expected to exceed the simplified acquisition threshold and that are set aside for small business concerns under multiple-award contracts, as described in 8.4 and 16.5;

(5) Orders, regardless of dollar value, that are set aside in accordance with sections 19.105, 19.106, 19.107, and 19.108 under multiple-award contracts, as described in 8.4 and 16.5; and

(6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

(d) *Independent contractors*. An independent contractor shall be considered a subcontractor.

(e) By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for—

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause—

*[Contracting Officer check as appropriate.]*

By the end of the base term of the contract and then by the end of each subsequent option period; or

By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.

(g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.

(2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

(End of clause)

## **52.219-15 [Reserved]**

### **52.219-16 Liquidated Damages-Subcontracting Plan.**

As prescribed in 19.109(e)(2)(ii) and 19.302-1(b)(2), insert the following clause:

#### LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (DEVIATION DEC 2025)

(a) The Government will measure performance by applying the percentage goals to the total actual subcontracting dollars, or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (b) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in a stated amount. The amount of probable damages attributable to the Contractor's failure to comply shall equal the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(b) Before the Contracting Officer makes a final decision that the Contractor has failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate the good faith efforts it made and to discuss the matter. The Contracting Officer may take failure to respond to the notice as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer will issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (a) of this clause.

(c) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(d) The Contractor has the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(e) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

## **52.219-17 Section 8(a) Award.**

As prescribed in 19108-10(c), insert the following clause:

SECTION 8(A) AWARD (OCT 2019)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Except for novation agreements, delegates to the \_\_\_\_\_ *[insert name of contracting activity]* the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; provided, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the \_\_\_\_\_ *[insert name of contracting agency]* Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(End of clause)

**52.219-18 Notification of Competition Limited to Eligible 8(a) Participants.**

As prescribed in 19.108-10(d), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) PARTICIPANTS (OCT 2022)

(a) Offers are solicited only from—

(1) Small business concerns expressly certified by the Small Business Administration (SBA) for participation in SBA's 8(a) program and which meet the following criteria at the time of submission of offer—

(i) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(ii) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by SBA;

(2) A joint venture, in which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause, that complies with 13 CFR 124.513(c); or

(3) A joint venture—

(i) That is comprised of a mentor and an 8(a) protégé with an approved mentor-protégé agreement under the 8(a) program;

(ii) In which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause; and

(iii) That complies with 13 CFR 124.513(c).

(b) By submission of its offer, the Offeror represents that it meets the applicable criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation. A contracting officer may consider a joint venture for contract award. SBA does not approve joint ventures for competitive awards, but see 13 CFR 124.501(g) for SBA's determination of participant eligibility.

(d) The \_\_\_\_\_ [*insert name of SBA's contractor*] will notify the \_\_\_\_\_ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock.

(End of clause)

*Alternate I (Mar 2023).* If the competition is to be limited to 8(a) participants within one or more specific SBA regions or districts, add the following paragraph (a)(1)(iii) to paragraph (a) of the clause:

(iii) The offeror's approved business plan is on the file and serviced by \_\_  
[ *Contracting Officer completes by inserting the appropriate SBA District and/or Area Office(s) as identified by the SBA.*]

**52.219-19 [Reserved]**

**52.219-20 [Reserved]**

**52.219-21 [Reserved]**

**52.219-22 [Reserved]**

**52.219-23 [Reserved]**

**52.219-24 [Reserved]**

**52.219-25 [Reserved]**

**52.219-26 [Reserved]**

**52.219-27 Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program.**

As prescribed in 19.106-4(a), insert the following clause:

NOTICE OF SET-ASIDE FOR, OR SOLE-SOURCE AWARD TO, SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDVOSB) CONCERNS ELIGIBLE UNDER THE SDVOSB PROGRAM. (DEVIATION DEC 2025)

(a) *Definition.*

*Service-disabled veteran-owned small business (SDVOSB) concern* means a small business concern—

(1) (i) Not less than 51 percent of which is owned and controlled by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran; or

(2) A small business concern eligible under the SDVOSB Program in accordance with 13 CFR part 128 (see FAR 19.106).

(3) *Service-disabled veteran*, as used in this definition, means a veteran as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16) and who is registered in the Beneficiary Identification and Records Locator Subsystem, or successor system that is maintained by the Department of Veterans Affairs' Veterans Benefits Administration, as a service-disabled veteran.

*Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program* means an SDVOSB concern that is designated in the System for Award Management (SAM) as certified by the Small Business Administration (SBA) in accordance with 13 CFR 128.300.

*Service-disabled veteran-owned small business (SDVOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to SDVOSB concerns eligible under the SDVOSB Program.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for, or awarded on a sole-source basis to, SDVOSB concerns eligible under the SDVOSB Program;

(2) Part or parts of a multiple-award contract that have been set aside for SDVOSB concerns eligible under the SDVOSB Program; and

(3) Orders set aside for SDVOSB concerns eligible under the SDVOSB Program, under multiple-award contracts as described in 8.4 and 16.5.

(c) *General.*

(1) Offers are solicited only from concerns designated in SAM as SDVOSB concerns certified by SBA. Offers received from concerns that are not SDVOSB concerns certified by SBA will not be considered.

(2) Any award resulting from this solicitation will be made only to a concern designated in SAM as an SDVOSB certified by SBA.

(d) A joint venture may be considered an SDVOSB concern if the managing partner of the joint venture complies with the criteria defined in paragraph (a) of this clause and 13 CFR 128.402.

(e) In a joint venture that complies with paragraph (d) of this clause, the SDVOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the SDVOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

## **52.219-28 Postaward Small Business Program Rerepresentation.**

As prescribed in 19.101(a)(2)(iii)(A), insert the following clause:

POSTAWARD SMALL BUSINESS PROGRAM REREPRESENTATION (DEVIATION DEC 2025)

(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*—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) If the Contractor represented that it was a small business concern, a small disadvantaged business concern, or a joint venture that was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon 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 date specified in the contract for exercising 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(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support--table-size-standards>.

(d) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service

contract, is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

(1) Was set aside for small business and has a value above the simplified acquisition threshold;

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation(s) required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting officer in writing within the timeframes specified in paragraph (b) of this clause, 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 SAM, or does not have a representation in SAM 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:

(1) The Contractor represents that it  is,  is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_.

(2) [Complete only if the Contractor represented itself as a small business concern in paragraph (g)(1) of this clause.] The Contractor represents that it  is,  is not, a small disadvantaged business concern as defined in 13 CFR 124.1001.

(3) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_.]

(4) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_.]

(5) *Service-disabled veteran-owned small business (SDVOSB) joint venture eligible under the SDVOSB Program.* The Contractor represents that it  is,  is not an SDVOSB joint venture eligible under the SDVOSB Program that complies with the requirements of 13 CFR 128.402. [ *The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_.* ]

(6) *HUBZone joint venture eligible under the HUBZone Program.* [ *Complete only if the offeror is a HUBZone small business concern.* ] The offeror represents, as part of its offer, It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [ *The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.* ] Each HUBZone small business concern participating in the HUBZone joint venture must be certified as a HUBZone concern. [ *Contractor to sign and date and insert authorized signer's name and title. \_\_\_\_\_* ]

(End of clause)

*Alternate I (DEVIATION Dec 2025).* As prescribed in 19.101(a)(2)(iii)(B), substitute the following paragraph (g)(1) for paragraph (g)(1) of the basic clause:

(g) (1) The Contractor represents its small business size status for each one of the NAICS codes assigned to this contract.

<b>NAICS Code</b>	<b>Small business concern (yes/no)</b>
_____	_____
_____	_____
_____	_____

[*Contracting Officer to insert NAICS codes.*]

## **52.219-29 Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.**

As prescribed in 19.107-4(a), insert the following clause:

NOTICE OF SET-ASIDE FOR, OR SOLE-SOURCE AWARD TO, ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS CONCERNS (DEVIATION DEC 2025)

(a) *Definitions—*

*Economically disadvantaged women-owned small business (EDWOSB) concern* as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and is certified pursuant to 13 CFR 127.300 as an EDWOSB. It

automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

*WOSB Program Repository* means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for, or awarded on a sole-source basis to, EDWOSB concerns;

(2) Part or parts of a multiple-award contract that have been set aside for EDWOSB concerns; and

(3) Orders set aside for EDWOSB concerns under multiple-award contracts as described in 8.4 and 16.5.

(c) *General.*

(1) Offers are solicited only from certified EDWOSB concerns. Offers received from concerns that are not certified EDWOSB concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a certified EDWOSB concern.

(d) *Joint venture.* A joint venture may be considered an EDWOSB concern if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and paragraph (c)(1) of this clause, and 13 CFR 127.506(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (d) of this clause, the EDWOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the EDWOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

## **52.219-30 Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.**

As prescribed in 19.107-4(b), insert the following clause:

NOTICE OF SET-ASIDE FOR, OR SOLE-SOURCE AWARD TO, WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (DEVIATION DEC 2025)

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

*Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127), as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300 as a WOSB. A certified EDWOSB is automatically eligible as a certified WOSB.

*WOSB Program Repository* means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been set aside for, or awarded on a sole-source basis to, WOSB concerns eligible under the WOSB Program;

(2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program; and

(3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in 8.4 and 16.5.

(c) *General.*

(1) Offers are solicited only from certified WOSB concerns eligible under the WOSB Program. Offers received from concerns that are not certified WOSB concerns eligible under the WOSB Program shall not be considered

(2) Any award resulting from this solicitation will be made to a certified WOSB concern eligible under the WOSB Program.

(d) *Joint venture.* A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and (c)(1) of this clause, and 13 CFR 127.506(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint

venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (d) of this clause, the WOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the WOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

## **52.219-31 Notice of Small Business Reserve.**

As prescribed in 19.112(e), insert the following provision:

NOTICE OF SMALL BUSINESS RESERVE (MAR 2020)

(a) This solicitation contains a reserve for one or more small business concerns identified at 19.000(a)(3). The small business program eligibility requirements apply.

(b) The small business concern(s) eligible for participation in the reserve shall submit one offer that addresses each portion of the solicitation for which it wants to compete. Award of the contract will be based on criteria identified elsewhere in the solicitation.

(End of provision)

## **52.219-32 [Reserved]**

## **52.219-33 Nonmanufacturer Rule.**

As prescribed in 19.104-3(e)(1), insert the following clause:

NONMANUFACTURER RULE (DEVIATION DEC 2025)

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

*Manufacturer* means the concern that transforms raw materials, miscellaneous parts, or components into the end item. Concerns that only minimally alter the item being procured do not qualify as manufacturers of the end item. Concerns that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer, where those identical modifications can be performed by and are available from the manufacturer of the existing end item.

*Nonmanufacturer* means a concern, including a supplier, that provides an end item it did not manufacture, process, or produce.

(b) *Applicability.*

(1) This clause does not apply to contracts awarded pursuant to the unrestricted portion of a partial set-aside or to a contractor that is the manufacturer of the product or end item.

(2) This clause applies to—

(i) Contracts that have been awarded pursuant to a set-aside for any of the small business concerns identified in 19.000(a)(3);

(ii) Contracts that have been awarded on a sole-source basis in accordance with sections 19.105, 19.106, 19.107, and 19.108;

(iii) Orders expected to exceed the simplified acquisition threshold and that are set aside for small business under multiple-award contracts, as described in 8.4 and 16.5;

(iv) Orders, regardless of dollar value, that are set aside in accordance with sections 19.105, 19.106, 19.107, and 19.108 under multiple-award contracts as described in 8.4 and 16.5; and

(v) Contracts using the HUBZone price evaluation preference to award to a HUBZone concern unless the Contractor waived the evaluation preference.

*(c) Requirements.*

(1) The Contractor shall—

(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers who are nonmanufacturers, see paragraph (c)(2) of this clause instead;

(ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced in the United States or its outlying areas by small business concerns.

(End of clause)