contracting officer, which shall be advisory in nature; and
(4) Evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or, in the case of contractors having multiple contracts, on an aggregate basis.

(b) The SBA is not authorized to (1) prescribe the extent to which any contractor or subcontractor shall subcontract, (2) specify concerns to which subcontracts will be awarded, or (3) exercise any authority regarding the administration of individual prime contracts or subcontracts.


19.708 Contract clauses.

(a) 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—

(1) A personal services contract is contemplated (see 37.104); or

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

(b)(1) Insert the clause at 52.219-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed $650,000 ($1.5 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—

(i) Contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(ii) Contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

(iii) The contract action will not be reported in the Federal Procurement Data System pursuant to 4.606(c)(5) or (c)(6), the contracting officer shall use the clause with its Alternate III.

(2) 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, II, or III.

(c)(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 (see 19.702), 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, and women-owned small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in paragraph (c)(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, 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 (c)(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 (c)(2) of this section, the contracting officer may include small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small 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 shall not use the clause at 52.219-10, Incentive Subcontracting Program.

[48 FR 42240, Sept. 19, 1983]

Editorial Note: For Federal Register citations affecting section 19.708, see the List
19.800  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 let subcontracts for performing those contracts to firms eligible for program participation. The SBA’s subcontractors are referred to as 8(a) contractors.

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

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer’s discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

(d) The SBA refers to this program as the 8(a) Business Development (BD) Program.

(e) The contracting officer shall comply with 19.203 before deciding to offer an acquisition to a small business concern under the 8(a) Program. For acquisitions above the simplified acquisition threshold, the contracting officer shall consider 8(a) set-asides or sole source awards before considering small business set-asides.

(f) 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.

19.801  [Reserved]

19.802  Selecting concerns for the 8(a) Program.

Selecting concerns for the 8(a) Program is the responsibility of the SBA and is based on the criteria established in 13 CFR 124.101–112.

19.803  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) concerns 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 an agency contracting activity through a search letter of an 8(a) firm’s capabilities and asks the agency to identify acquisitions to support the firm’s business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm’s capabilities.

   (1) Identification of the concern and its owners.
   (2) Background information on the concern, including any and all information pertaining to the concern’s technical ability and capacity to perform.
   (3) The firm’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 concern’s plans to present and future agency requirements.
   (5) If construction is involved, the request shall also include the following:
      (i) The concern’s capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.
      (ii) The concern’s capacity in each construction category in terms of estimated dollar value (e.g., electrical, up to $100,000).