

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1**

[FAR Case 94-780]

RIN 9000-AG37

**Federal Acquisition Regulation; Small
Business**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is considering amending the Federal Acquisition Regulation (FAR) as a result of changes to 41 U.S.C. 22 by Sections 4004, 7101, 7102, and 7106 of the Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comment Due Date: Comments should be submitted on or before March 7, 1995 to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be held on February 3, 1995, at 9:30 a.m.—

Oral/Written Statements: Views to be presented at the public meeting should be sent, in writing, to the FAR Secretariat, at the address given below, not later than January 31, 1995.

ADDRESSES: Interested parties should submit written comments to:—General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405, Telephone: (202) 501-4755.

The public meeting will be held at:—General Services Administration Auditorium, 18th & F Streets, NW, First Floor, Washington, DC 20405.

Please cite FAR case 94-780 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Small Business Team Leader, at (202) 501-1143 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 94-780.

SUPPLEMENTARY INFORMATION:**A. Background**

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network. In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis. We believe prompt publication of proposed rules provides the public the opportunity to participate more fully in the process of developing regulations.

This notice announces FAR revisions developed under FAR case 94-780. The following sections of the Federal Acquisition Streamlining Act are implemented by this proposed rule:

a. Section 4004, Small Business Reservation, amends section 15(j) of the Small Business Act to reserve each contract for the purchase of goods or services that have an anticipated value greater than \$2,500, but not greater than \$100,000, for exclusive small business participation unless the contracting officer is unable to obtain offers from two or more small businesses that are competitive with market price, quality and delivery.—

b. Section 7101, Repeal of Certain Requirements, paragraph (a) deletes sections 15(e) and (f) from the Small Business Act. These sections established the priority for the award of contracts and subcontracts in carrying out the set-aside programs.

c. Section 7102, Contracting Program for Certain Small Business Concerns (not applicable to DOD, NASA, and the Coast Guard), amends Section 15(g)(1) of the Small Business Act to permit the Head of an Agency to enter into competition using less than full and open competition by restricting competition to small disadvantaged businesses (SDB's) or by using a price evaluation preference of up to 10 percent when evaluating SDB offers received as a result of an unrestricted solicitation.—

d. Section 7106, Procurement Goals for Small Business Concerns Owned by Women, establishes a Governmentwide goal for participation by women-owned small business concerns in prime contracts and subcontracts and revises

sections 8 and 15 of the Small Business Act to accommodate the goal.

Public Meeting

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. The public is encouraged to furnish its views; the FAR Council anticipates that public comments will be very helpful in formulating final rules.

A public meeting will be held on February 3, 1995, to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR.

Persons or organizations wishing to make presentations will be allowed 10 minutes each to present their views, provided they notify the FAR Secretariat at (202) 501-4755. Written statements for presentation should be submitted to the FAR Secretariat by January 31, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

B. Regulatory Flexibility Act

The proposed rule contains a number of amendments that will have a beneficial effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*; e.g., the rule provides for the targeting for procurements to small disadvantaged businesses through small disadvantaged business set-asides and an evaluation preference in unrestricted procurements; puts women-owned small businesses on an equal footing with small disadvantaged businesses in subcontracting plan requirements; automatically sets aside acquisitions greater than \$2,500 but not greater than \$100,000 for small business; and simplifies and clarifies the small business representations. Since the rule is considered significantly beneficial to small entities, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94-780, Small Business (Pub. L. 103-355, Federal

Acquisition Streamlining Act of 1994)), in correspondence.

C. Paperwork Reduction Act-

The Paperwork Reduction Act does apply because the proposed changes to the FAR affect recordkeeping and information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Requests for approval of revised clearances 9000-0006 and 9000-0007 have been submitted to OMB under separate cover.

List of Subjects in 48 CFR Chapter 1

Government procurement.

Dated: December 27, 1994.

Capt. Barry Cohen,

SC, USN, Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.-

Therefore, it is proposed that 48 CFR Chapter 1 be amended as set forth below:-

1. The authority citation for 48 CFR Chapter 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.602 is amended by revising paragraph (a)(2) to read as follows:

4.602 Federal Procurement Data System.-

(a) * * * _

(2) a means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, small disadvantaged and women-owned small business concerns are sharing in Federal contracts; and

* * * * *

3. Section 4.603 is added to read as follows:

4.603 Solicitation provision.-

The contracting officer shall insert the provision at 52.204-00, Women-Owned Business, in all solicitations exceeding the simplified acquisition threshold in part 13 when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.002 [Amended]-

4. Section 5.002 is amended in paragraph (c) by removing "labor surplus area" and inserting in its place "women-owned small business".

5. Section 5.207 is amended in paragraph (c)(2)(xii) by removing "labor surplus area concerns" and inserting in its place "small disadvantaged businesses"; and by revising paragraph (d) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business set-aside or small disadvantaged business set aside, the appropriate CBD Numbered Note will be cited.

* * * * *

5.404-1 [Amended]

6. Section 5.404-1 is amended in paragraph (b)(6)(ii) by removing "LSA" and inserting in its place "small disadvantaged business".

7. Section 5.503 is amended by revising the second sentence of paragraph (a) to read as follows:

5.503 Procedures.

(a) * * * Contracting officers shall give small, small disadvantaged and women-owned small business concerns maximum opportunity to participate in these acquisitions.

* * * * *

PART 6—COMPETITION REQUIREMENTS

8. Section 6.203 is revised to read as follows:

6.203 Set-asides for small and small disadvantaged business concerns.-

(a) To fulfill the statutory requirements relating to small and small disadvantaged business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small or small disadvantaged business concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to set-asides.

PART 7—ACQUISITION PLANNING-

9. Section 7.105 is amended by revising the third sentence of paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * * _

(1) * * * Include consideration of small business and small disadvantaged business concerns (see part 19). * * *

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

10. Section 8.404 is amended by revising the last sentence of paragraph (a) to read as follows:

8.404 Using schedules.

(a) * * * When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider set-asides in accordance with 19.503.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

11. Section 9.104-3 is amended by revising the last sentence of paragraph (c) to read as follows:

9.104-3 Application of standards.

* * * * *

(c) * * *

If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

* * * * *

PART 14—SEALED BIDDING

14.205-4 [Amended]

12. Section 14.205-4 is amended in the fourth sentence of paragraph (b) by inserting after the word "small" the phrase ", small disadvantaged and women-owned small"; and removing "and labor surplus areas (see 20.104(e) and (f))"; and in the last sentence of (b)(3) by removing "parts 19 and 20" and inserting in its place "part 19".

13. Section 14.206 is revised to read as follows:

14.206 Small business and small disadvantaged business set-asides.-

(See part 19.)

14.407-6 [Amended]

14. Section 14.407-6 is amended by removing paragraph (a)(3) and redesignating (a)(4) as (a)(3).

14.502 [Amended]-

15. Section 14.502(b)(3) is amended by removing the text following the word

“business” and inserting in its place “or total small disadvantaged business set-aside (see 19.503–2 and 19.503–3).”

PART 15—CONTRACTING BY NEGOTIATION

15.705 [Amended]—

16. Section 15.705 is amended in paragraph (b) by removing “business and labor surplus area” and inserting in its place “, small disadvantaged and women-owned small business”.

15.706 [Amended]—

17. Section 15.706 is amended in paragraph (d)(4) by removing “labor surplus area” and inserting in its place “women-owned small business”.

15.905–1 [Amended]

18. Section 15.905–1 is amended in the first sentence of paragraph (c) by inserting after the word “individuals,” the phrase “women-owned small businesses,”; and removing the phrase “labor surplus areas,”.

15.1001 [Amended]

19. Section 15.1001 is amended in paragraph (b)(2) by

- inserting after the word “small” the first place it occurs the phrase “or small disadvantaged”;—
- removing the comma after “19.5)” and inserting the phrase “or an award based on an evaluation preference (subpart 19.11),” in its place; and—
- in (b)(2)(ii) by inserting after the word “size” the phrase “or small disadvantaged business”.

PART 16—TYPES OF CONTRACTS

16.103 [Amended]—

20. Section 16.103 is amended in paragraph (d)(3) by removing the words “or labor surplus area concerns”.

16.505 [Amended]

21. Section 16.505 is amended in paragraphs (d)(4) and (d)(5)(ii) by removing the phrase “or labor surplus area”.

PART 17—SPECIAL CONTRACTING METHODS

17.104–1 [Amended]

22. Section 17.104–1 is amended—

- in paragraph (a) by removing the phrase “labor surplus area” and inserting in its place “small disadvantaged business”;—
- in paragraph (b) by removing the phrase “or labor surplus area”; and—
- in paragraph (b)(2) by removing “(Partial labor surplus area set-asides are only authorized for DOD activities at this time.)”.

PART 19—SMALL BUSINESS PROGRAMS

23. The title of Part 19 is revised to read as set forth above.

24. Section 19.000 is amended in paragraph (a)(3) by inserting after the word “small” the phrase “and small disadvantaged”; in (a)(6) by removing the word “and”; in (a)(7) by removing the period at the end of the sentence and replacing it with “; and”; and by adding (a)(8) to read as follows:

19.000 Scope of part.

(a) * * *

(8) The evaluation preference for small disadvantaged business concerns.

* * * * *

25. Section 19.001 is amended by—

- adding, in alphabetical order, the definitions *Labor surplus area*, *Labor surplus area concern*, *Set-aside*, and *Women-owned small business concern*; and
- revising the definition *Small disadvantaged business concern* to read as follows:

19.001 Definitions.

* * * * *

Labor surplus area means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.—

Labor surplus area concern means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

* * * * *

Set-aside means an acquisition procedure under which competition is limited exclusively to small business or small disadvantaged business concerns.

* * * * *

Small disadvantaged business concern means a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals. This term also means a

small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one of these entities, that has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and that meets the requirements of 13 CFR part 124. The definition of *small disadvantaged business concern* is different for DOD, NASA and Coast Guard; see agency regulations.

(a) *Socially disadvantaged individuals* means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) are to be considered socially and economically disadvantaged.

(1) *Subcontinent Asian Americans* means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(2) *Asian Pacific Americans* means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

(3) *Native Americans* means American Indians, Eskimos, Aleuts, and Native Hawaiians.

(b) *Economically disadvantaged individual* is defined as a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged (see 13 CFR part 124).

(c) *Native Hawaiian Organization* means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

(d) *Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians,

including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.

Women-owned small business concern means a small business concern which 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; and whose management and daily business operations are controlled by one or more women.

26. Section 19.102 is amended by removing paragraph (f)(3); redesignating paragraphs (f)(4) through (f)(7) as (f)(3) through (f)(6); in the first sentence of redesignated paragraph (f)(4)(i) by removing the word "domestic"; and revising redesignated paragraph (f)(5) to read as follows:

19.102 Size standards.

* * * * *

(f) * * * _

(5) For a specific solicitation set-aside for small business under 19.503-3 or 8(a) under subpart 19.8, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

* * * * *

27. Section 19.201 is amended by revising paragraphs (a), (b), (c)(9), and (d) to read as follows:

19.201 General policy.—

(a) It is the policy of the Government to place a fair proportion of its acquisitions, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems, with small business concerns, small disadvantaged business concerns, and women-owned small business concerns. Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

(b) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small, small disadvantaged and women-owned small business program requirements and take all reasonable action to increase participation in their activities' contracting processes by these businesses.

(c) * * *

(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under subpart 19.5 as a set-aside, or under subpart 19.8 as a section 8(a) award.

(d) Small Business Specialists shall be appointed and act in accord with agency regulations.

28. Section 19.202 is amended by revising the first sentence to read as follows:

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under subpart 19.5 or 19.8. * * *

29. Section 19.202-3 is revised to read as follows:

19.202-3 Labor Surplus Area Priority.

Priority shall be given to awarding of contracts and the placement of subcontracts to small business concerns which will perform substantially in labor surplus areas. In the event of equal low bids (see 14.407-6), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

30. Section 19.202-5 is amended by revising paragraphs (a) and (b) to read as follows:

19.202-5 Data collection and reporting requirements.

* * * * *

(a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business or women-owned small business (see the provision at 52.219-1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small, small

disadvantaged, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see subpart 4.6).—

31. Section 19.202-6 is amended by revising the introductory text and paragraph (a) to read as follows:

19.202-6 Determination of fair market price.

Agencies shall determine the fair market price of small business set-aside, small disadvantaged business set-aside, and 8(a) contracts as follows:—

(a) For total small business set-asides, total small disadvantaged business set-asides and partial small business set-aside contracts, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.805-2.

* * * * *

32. Section 19.301 is amended by revising paragraphs (a), (b), (c), and the first sentence of paragraph (d) to read as follows:

19.301 Representation by the offeror.

(a) To be eligible for award as a small or a small disadvantaged business, an offeror must represent in good faith as to its status at the time of written self certification. An offeror may represent that it is a small business concern or a small disadvantaged business concern in connection with a specific solicitation if it meets the definitions applicable to the solicitation and has not been determined by the Small Business Administration (SBA) to be other than a small or small disadvantaged business.—

(b) The contracting officer shall accept an offerors representation in a specific bid or proposal that it is a small or small disadvantaged business unless (1) another offeror or interested party challenges the concern's representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning a specific representation shall be referred to the SBA in accordance with 19.302.

(c) An offerors representation that it is a small or small disadvantaged business is not binding on the SBA. If an offeror's 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 or small disadvantaged business. A concern cannot become eligible for a specific award by taking action to meet the definition of a small business concern or

small disadvantaged business concern after the SBA has issued its determination.

(d) If the SBA determines that the status of a concern as a "small business", a "small disadvantaged business" or a "women-owned small business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part of all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in section 16(d) of the Act. * * *

33. Section 19.302 is redesignated as 19.302-1; in paragraphs (d)(1), introductory text, (f), (g)(1), and (h)(1)(ii) of newly designated 19.302-1, remove the words "business day" or "business days" and insert "workday" or "workdays" in their place; and new 19.302 heading and 19.302-2 are added to read as follows:

19.302 Protesting a small or small disadvantaged business representation.

19.302-1 Protesting a small business representation.

* * * * *

19.302-2 Protesting a small disadvantaged business representation.

Any offeror, the contracting officer, the Small Business Administration (SBA), or other interested party may protest a concern's representation of disadvantaged status.

(a) An offeror may protest a concern's representation status by filing a protest with the contracting officer. The protest must be filed within the times specified in (FAR) 48 CFR 19.302-1(d)(1) and must contain specific detailed evidence supporting the basis of protest.

(b) The contracting officer or the SBA may protest a concern's representation of disadvantaged status at any time. If a contracting officer's protest is based on information provided by a party ineligible to protest directly or ineligible to protest under the timeliness standards, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own. The SBA protests a concern's representation of disadvantaged status by filing directly with its Office of Program Eligibility and notifying the contracting officer.

(c) The contracting officer shall return untimely protests to the protester. This includes protests filed before bid

opening or notification of apparent successful offeror.

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA

- (1) The protest;
- (2) The date the protest was received and a determination of timeliness;—

(3) A copy of the protested concern's self-certification of disadvantaged status; and—

(4) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.—

(e) Do not withhold award when the contracting officer makes a written determination that award must be made to protect the public interest.

(f) The SBA Director, Office of Program Eligibility, will determine the disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protester. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless (1) it is appealed and (2) the contracting officer receives the appeal decision before award.—

(g) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is socially and economically disadvantaged. Do not use the presumption as a basis for award without first inquiring as to when a determination can be expected and waiting for the determination, unless further delay in award would be disadvantageous to the Government.—

(h) An SBA determination may be appealed by (1) The interested party whose protest has been denied; (2) The concern whose status was protested; or (3) The contracting officer. The appeal must be filed with the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development within five working days after receipt of the determination. If the contracting officer receives the SBA's decision of the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will apply to future acquisitions.—

34. Section 19.303 is amended by revising paragraph (a) to read as follows:

19.303 Determining product or service classifications.—

(a) The contracting officer shall determine the appropriate standard industrial classification code and related small business size standard and include them in solicitations above the micro-purchase threshold in (FAR) 48 CFR 13.106.

* * * * *

35. Section 19.304 is revised to read as follows:

19.304 Solicitation provisions and clause.—

(a) The contracting officer shall insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) The contracting officer shall insert the clause at 52.219-01, Priority for Labor Surplus Area Concerns, in solicitations and contracts that exceed the simplified acquisition threshold in part 13 when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

19.401 [Amended]—

36. Section 19.401 is amended in paragraph (a) by removing the phrase "and small disadvantaged business".—

37. Section 19.402 is amended by revising paragraph (c)(1)(ii) to read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(1) * * *

(ii) new qualified small, small disadvantaged and women-owned small business sources, and

* * * * *

38. Subpart 19.5 is revised to read as follows:

Subpart 19.5—Set-Asides for Small and Small Disadvantaged Businesses

- Sec.
- 19.501 General.
- 19.502 Set-aside program order of precedence.
- 19.503 Setting aside acquisitions.
- 19.503-1 Requirements for setting aside acquisitions.
- 19.503-2 Total Small Disadvantaged Business (SDB) set-asides.
- 19.503-3 Total small business set-asides.
- 19.503-4 Partial small business set-asides.
- 19.503-5 Methods of conducting set-asides.

- 19.503-6 Insufficient causes for not setting aside an acquisition.
 19.504 Setting aside a class of acquisitions.
 19.505 Rejecting Small Business Administration recommendations.
 19.506 Withdrawing or modifying set-asides.
 19.507 Automatic dissolution of a set-aside.
 19.508 Solicitation provisions and contract clauses.

§ 19.501 General.—

(a) The purpose of set-asides is to award certain acquisitions exclusively to small business or small disadvantaged business concerns. Under a "small business set-aside", competition is limited to small business concerns. Under a "small disadvantaged business set-aside", competition is limited to small disadvantaged business concerns. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial.—

(b) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the Small Business Administration (SBA) procurement center representative and concurred in by the contracting officer.—

(c) The contracting officer shall review acquisitions to determine if they can be set aside, giving consideration to the recommendations of agency personnel having cognizance of the agency's small business programs and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs. Automated contracting systems are not exempt from the requirements of this subpart.—

(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representatives security clearance) all proposed acquisitions in excess of the micro-purchase limitation in 13.106 that have not been unilaterally set aside.—

(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.—

(f) All solicitations involving set-asides must specify the applicable small business size standard and product classification (see 19.303).—

(g) Except as authorized by law, a contract may not be awarded as a result of a set-aside if the cost to the awarding agency exceeds the fair market price.—

(h) Section 305 of Public Law 103-403 authorizes public and private organizations for the handicapped to participate for fiscal year 1995 in acquisitions set-aside for small business concerns. Status as a small business concern is not accorded a public or private organization for the handicapped for the purposes of other preferential provisions available to small business concerns; *e.g.*, eligibility for certificates of competency or higher progress payment rates.—

(1) The contracting officer shall rely on the offeror's self-certification in a specific bid or proposal that it is a public or private organization for the handicapped unless another offeror or interested party files a protest. An interested party may file a protest challenging an offeror's self-certification by forwarding the protest to the contracting officer by close of business on the fifth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any protest, whether timely or untimely, the contracting officer shall promptly forward the protest and its supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration. Upon receipt of a protest, the SBA will notify the contracting officer and the protester of the date it was received, and that the status of the public or private organization for the handicapped being challenged is under consideration by the SBA. Within 10 working days after receiving a protest, the SBA will determine the eligibility of the public or private organization for the handicapped and notify the contracting officer, the protester, and the challenged offeror of its decision by certified mail, return receipt requested. The determination of the Associate Administrator for Procurement Assistance, SBA, is final. Award will be made based on this determination. After receiving a protest involving the status of a public or private organization for the handicapped, the contracting officer shall not award the contract until (i) the SBA has made a status determination or (ii) 10 working days have expired since SBA's receipt of a protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.—

(2) Any small business offeror which experiences or is likely to experience severe economic injury as a result of award to a public or private organization for the handicapped may file an appeal of the award with the contracting officer. The appeal must be received by close of business on the tenth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any appeal, whether timely or untimely, or whether received before or after award, the contracting officer shall forward the appeal and supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision shall be final. The contracting officer should, when practical, withhold award until expiration of the 10-day appeal period, or; when an appeal is filed, withhold award until the contracting officer receives the SBA determination of appeal, unless delay would be disadvantageous to the Government. The SBA shall notify the contracting officer of the SBA determination and advise the agency or department to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

19.502 Set-aside program order of precedence.—

(a) In carrying out set-aside programs, contracting officers shall award contracts in the following order of precedence:—

(1) A total set-aside for small disadvantaged business concerns.

(2) A total set-aside for small business concerns.

(3) A partial set-aside for small business concerns.

(b) Set-aside priorities of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard are set forth in the respective agency FAR Supplements.

19.503 Setting aside acquisitions.

19.503-1 Requirements for setting aside acquisitions.

Using the order of precedence in 19.502, the contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.503-2, 19.503-3, or 19.503-4 exist. This

requirement does not affect the responsibility of agencies to make purchases from required sources of supply such as Federal Prison Industries, Industries for People who are Blind or Severely Disabled, and multiple-award Federal Supply Schedule contracts.

19.503-2 Total Small Disadvantaged Business (SDB) set-asides.

(a) The contracting officer shall set aside any acquisition over the micro-purchase threshold for small disadvantaged business participation when there is a reasonable expectation that—

(1) Offers will be obtained from at least two responsible SDB concerns offering the products of different small disadvantaged business (but see paragraph (c) of this subsection); and

(2) Awards will be made at fair market prices unless otherwise provided by law.

(b) The contracting officer shall not set aside acquisitions for small disadvantaged business concerns when:

(1) The supply or service has been successfully acquired as a small business set aside;

(2) The acquisition is reserved for the 8(a) program;

(3) The Small Business Administration has determined that no small business manufacturer exists (see 19.102(f)(4)); or

(4) As otherwise determined by the Agency Head or designee.

(c) For industries where the contracting officer finds that there are no small disadvantaged business manufacturers, the contracting officer may authorize the small disadvantaged business regular dealers to provide the product of any small business concern.

(d) The Agency head or designee is authorized to determine whether use of small disadvantaged business set-asides has caused a particular industry category to bear a disproportionate share of the contracts awarded by a particular contracting activity to achieve its small disadvantaged business goal. Upon making a determination that a particular industry is bearing a disproportionate share, the Agency Head or designee may limit the use of small disadvantaged business set-asides in the affected industry category, at the contracting activity. This limitation shall not apply to solicitations that already have been publicized as small disadvantaged business set-asides. Requests for determinations shall be forwarded through agency channels to the Agency head or designee and include—

(1) The standard industrial classification (SIC) code(s) affected;

(2) Supporting information to justify the request, including dollars and percentages by the contracting activity, under the affected SIC code(s) for the previous two fiscal years and current fiscal year to date for—

(i) Total awards;

(ii) Total awards to small businesses;

(iii) Total awards to small disadvantaged businesses; and

(iv) Awards to small disadvantaged businesses under small disadvantaged business set-asides.

(e) Small disadvantaged business set-aside requirements and procedures for DOD, NASA and Coast Guard are different and are set forth in agency supplements.

19.503-3 Total small business set-asides.

(a) Except as provided in paragraph (b), each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold in 13.106 but not over \$100,000, is automatically reserved exclusively for small business concerns and shall be set-aside. This requirement does not preclude the award of a contract with a value not greater than \$100,000 under 19.8, Contracting with the Small Business Administration; 19.1006(c), emerging small business set-asides; or 19.503-2, as a small disadvantaged business set-aside.

(b) This requirement does not apply to acquisitions over \$25,000 during the period when set-asides cannot be considered for the four designated industry groups (see 19.1006(b)).

(c) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (e) of this section); and (2) awards will be made at fair market prices. Total set-asides shall not be made unless such a reasonable expectation exists (but see 19.503-4 as to partial set-asides).

Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.—

(d) Acquisitions shall not be totally set-aside for small business concerns when (1) the supply or service has been successfully acquired as a small

disadvantaged business set-aside; or (2) the acquisition is reserved under the 8(a) program.

(e) In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(4)). This would permit small business regular dealers to provide any firm's product. In these cases, the contracting officer's determination in paragraph (c)(1) of this subsection will be based on offers from at least two responsible small business regular dealers offering the products of different concerns.

19.503-4 Partial small business set-asides.

(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—

(1) A total small business or small disadvantaged business set-aside is not appropriate;

(2) The requirement is severable into two or more economic production runs or reasonable lots;

(3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price;

(4) The acquisition is not subject to simplified acquisition procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.—

(c)(1) The contracting officer shall award the non-set-aside portion using normal contracting procedures.—

(2)(i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be

conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see paragraph (c)(2)(ii) of this section). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.—

(ii) If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part of the acquisition shall have first priority with respect to negotiations for the set-aside.

19.503-5 Methods of conducting set-asides.—

Total set-asides may be conducted by using simplified acquisition procedures (see part 13), sealed bids (see part 14), competitive proposals (see part 15), or procedures for acquisition of commercial items (see part 12). Partial small business set-asides may be conducted using sealed bids (see part 14), competitive proposals (see part 15), or procedures for acquisition of commercial items (see part 12).

19.503-6 Insufficient causes for not setting aside an acquisition.—

None of the following is, in itself, sufficient cause for not setting aside an acquisition:—

(a) A large percentage of previous contracts for the required item(s) has been placed with small business concerns.—

(b) The item is on an established planning list under the Industrial Readiness Planning Program. However, a total set-aside shall not be made when the list contains a large business Planned Emergency Producer of the item(s) who has conveyed a desire to supply some or all of the required items.—

(c) The item is on a Qualified Products List. However, a total set-aside

shall not be made if the list contains the products of large businesses unless none of the large businesses desire to participate in the acquisition.—

(d) A period of less than 30 days is available for receipt of offers.—

(e) The contract is classified.—

(f) Small business concerns are already receiving a fair proportion of the agency's contracts for supplies and services.—

(g) A class set-aside of the item or service has been made by another contracting activity.—

(h) A "brand name or equal" product description will be used in the solicitation.

19.504 Setting aside a class of acquisitions.—

(a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in 19.503-1, 19.503-3, or 19.503-4. The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen.—

(b) The determination to set aside a class of acquisitions may be either unilateral or joint.—

(c) Each class small business set-aside determination shall be in writing and must—

(1) Specifically identify the product(s) and service(s) it covers;—

(2) Provide that the set-aside does not apply to any acquisition of \$100,000 or less;—

(3) Provide that the set-aside applies only to the (named) contracting office(s) making the determination;—

(4) Provide that the set-aside does not apply to any individual acquisition if the requirement is not severable into two or more economic production runs or reasonable lots, in the case of a partial class set-aside; and—

(5) Provide that the procurement was not previously set aside for small disadvantaged business by the (named) contracting office(s).—

(d) The contracting officer shall review each individual acquisition arising under a class set-aside to identify any changes in the magnitude of requirements, specifications, delivery requirements, or competitive market conditions that have occurred since the initial approval of the class set-aside. If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to

satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (if one is assigned), stating the reasons.

19.505 Rejecting Small Business Administration recommendations.—

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 workdays of the contracting officer's receipt of the recommendation.—

(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 workdays after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 workdays. Pending issuing the decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.—

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—

(1) Within 1 workday, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and—

(2) The SBA shall be allowed 15 workdays after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall 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 shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.—

(d) 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) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.—

(e) The agency head shall reply to the SBA within 30 workdays after receiving

the appeal. The decision of the agency head shall be final.—

(f) 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 shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.—

(g) Procedures for rejecting SDB set-aside recommendations are different for DOD, NASA, and Coast Guard and are set forth in agency supplements.

19.506 Withdrawing or modifying set-asides.—

(a) If, before award of a contract involving a 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 set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.—

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small business specialist and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of set-asides under \$100,000.—

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

19.507 Automatic dissolution of a set-aside.—

(a) If a set-aside acquisition or portion of an acquisition is not awarded, the unilateral or joint determination to set the acquisition aside is automatically dissolved for the unawarded portion of the set-aside. The required supplies and/or services for which no award was made may be acquired by sealed bidding or negotiation, as appropriate.—

(b) Before issuing a solicitation for the items called for in a set-aside that was dissolved, the contracting officer shall ensure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small or small disadvantaged business concerns.

19.508 Solicitation provisions and contract clauses.—

(a)–(b) [Reserved] —

(c) The contracting officer shall insert the clause at 52.219–6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides (see 19.503–3). The clause at 52.219–6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.503–3(e).—

(d) The contracting officer shall insert the clause at 52.219–7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides (see 19.503–4). The clause at 52.219–7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.503–3(e).—

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts expected to exceed \$100,000 for supplies, services, and construction, if any portion of the requirement is to be set aside for small or small disadvantaged business, or if the contract is to be awarded under subpart 19.8.—

(f) The contracting officer shall insert the clause at 52.219–15, Notice of Participation by Organizations for the Handicapped, in solicitations and contracts issued through September 30, 1995, involving total or partial small business set-asides.—

(g) The contracting officer shall insert the clause at 52.219–00, Notice of Total Small Disadvantaged Business Set-Aside, in solicitations and contracts involving total small disadvantaged business set-asides (see 19.503–2). The clause at 52.219–00 with its Alternate I will be used when the acquisition is for a product in a class for which the contracting officer has determined that there are not small disadvantaged business manufacturers or processors in accordance with 19.503–2(c).—

Subpart 19.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

39. The title of Subpart 19.7 is revised to read as set forth above.—

40. Section 19.702 is amended by revising the introductory text and paragraph (b)(4) to read as follows:

19.702 Statutory requirements.—

Any contractor receiving a contract for more than the simplified acquisition threshold in 13.000 shall agree in the contract that small business concerns, small disadvantaged business concerns and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. 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, small disadvantaged business concerns and women-owned small business concerns.

* * * * *

(b) * * *

(4) For modifications to contracts that do not contain the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior clauses).

* * * * *

41. Section 19.703 is amended by revising paragraph (a) introductory text, (a)(1), and (b) to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern, small disadvantaged business concern or a woman-owned small business concern.

(1) To represent itself as a small business concern or a woman-owned small business concern, a concern must meet the appropriate definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status. 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 121.1601 through 121.1608. Protests challenging a subcontractor's disadvantaged status representation shall be filed in

accordance with 13 CFR 124.601 through 124.610. Protests challenging a subcontractor's status as a women-owned small business concern shall be filed in accordance with Small Business Administration procedures.

42. Section 19.704 is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (a)(6), and (b) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors;

* * * * *

(3) A description of the efforts the offeror will make to ensure that small business concerns, small disadvantaged business concerns and women-owned small business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-owned Small Business Concerns (see 19.708(b)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (see 19.708(c));

* * * * *

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures 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, small disadvantaged and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

* * * * *

19.705-1 [Amended].

43. Section 19.705-1 is amended in the first sentence by removing the phrase "for Small and Small Disadvantaged Business Concerns".

44. Section 19.705-4 is amended by revising the last sentences of paragraphs (b) and (c); the first sentence of paragraphs (d)(1) and (d)(5); and revising (d)(4) to read as follows:

19.705-4 Reviewing the subcontracting plan.

* * * * *

(b) * * * If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-owned Small Business Concerns, the contracting officer may find the bidder nonresponsible.

(c) * * * 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, small disadvantaged or women-owned small businesses.

(d) * * * (1) Evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged and women-owned small business concerns. * * *

* * * * *

(4) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small, small disadvantaged 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.

(5) Advise the offeror of available sources of information on potential small, small disadvantaged and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. * * *

* * * * *

19.705-7 [Amended].

45. Section 19.705-7 is amended—
a. in the first sentence of paragraph (a) by removing the word "and" the first time it is used and replacing it with a comma; and adding the phrase "and women-owned small" after the word "disadvantaged";

b. in the third sentence of paragraph (d) by removing the words "business and" and replacing them with a comma;

and adding the phrase "and women-owned small" after the word "disadvantaged";

c. in paragraph (f) by removing the words "Business and" and replacing them with a comma; and adding the phrase "and Women-Owned Small" after the word "Disadvantaged".

46. Section 19.706 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

(a) * * *

(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small, small disadvantaged and women-owned small business concerns;

(3) Information on whether the contractor's efforts to ensure the participation of small, small disadvantaged and women-owned small business concerns are in accordance with its subcontracting plan;

* * * * *

47. Section 19.708 is amended by revising paragraph (a) introductory text, (b) and (c) to read as follows:

19.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, in solicitations and contracts when the contract amount is expected to be over the simplified acquisition threshold in 13.000 unless—

* * * * *

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, unless the acquisition has been set-aside or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned

Small Business Subcontracting Plan, or its Alternate I.—

(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(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small, small disadvantaged 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, small disadvantaged 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, small disadvantaged 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.

Subpart 19.9—[Removed and Reserved]

48. Subpart 19.9, consisting of sections 19.901 and 19.902, is removed and reserved.

49. Section 19.1006 is amended by revising paragraph (b)(1); in paragraph (c)(1)(i) by removing "13.105 or"; and in paragraph (c)(3) by removing "small purchase" and inserting in its place "simplified acquisition". The revised text reads as follows:

19.1006 Procedures.

* * * * *

(b) * * *

(1) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989,

through September 30, 1996, that have an anticipated dollar value greater than \$25,000 shall not be considered for small business set-asides under subpart 19.503-3 or 19.503-4 (however, see paragraphs (b)(2) and (c)(1) of this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see subpart 19.8) or as small disadvantaged business set-asides (see 19.503-2). During the period when set-asides cannot be considered for acquisitions in the four designated industry groups, the evaluation preference at 19.11 shall not be used.

* * * * *

50. Subpart 19.11 is added to read as follows:

Subpart 19.11—Evaluation Preference for Small Disadvantaged Business Concerns

Sec.

- 19.1100 Policy.
- 19.1101 Applicability.
- 19.1102 Procedures.
- 19.1103 Contract clause.

19.1100 Policy.

Offers from small disadvantaged business concerns shall be given an evaluation preference in accordance with this subpart. Evaluation preference for small disadvantaged business concerns is different for DOD, NASA and Coast Guard, see agency supplements.

19.1101 Applicability.

The evaluation preference shall be used in unrestricted, competitive acquisitions where award is based on price and price-related factors. The preference may be used at the discretion of the source selection authority in other competitive acquisitions. Do not use the evaluation preference in acquisitions which are set-aside under subpart 19.5.

19.1102 Procedures.

(a) Give offers from small disadvantaged business concerns a preference in evaluation by adding a factor of 10 percent (or a different percentage not exceeding 10 percent, if required by agency regulations) to the price of all offers, except—

- (1) Offers from small disadvantaged business concerns which have not waived the evaluation preference;
- (2) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in (FAR) 48 CFR 25.402; or

(3) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(b) Apply the factor on a line item by line item basis or apply it to any group on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the 10 percent factor.

(c) Do not evaluate offers using the preference when it would cause award to be made at a price which exceeds fair market price by more than 10 percent.

19.1103 Contract clause.

—Use the clause at 52.219.02, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations and contracts involving unrestricted, competitive acquisitions where award is based on price and price related factors. Use the clause with its Alternate I when the contracting officer determines that there are not small disadvantaged business manufacturers that can meet the requirements of the solicitation.

PART 20—[RESERVED]

51. Part 20 is removed and reserved.

PART 25—FOREIGN ACQUISITION

25.105 [Amended]

52. Section 25.105 is amended in paragraph (a)(1) by removing the phrase "that is not a labor surplus area concern"; and in paragraph (a)(2) by removing the phrase "or any labor surplus area concern".

25.404 [Reserved]

53. Section 25.404 is removed and reserved.

25.1002 [Amended]

54. Section 25.1002 is amended in paragraph (b)(2) by removing the text following the word "small" and inserting in its place "or small disadvantaged business set asides under 19.503-2 and 19.503-3."

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.104 [Amended]

55. Section 26.104 is amended in paragraphs (a) and (b) by removing "Business and" and inserting a comma in its place; and inserting after the word "Disadvantaged" the phrase "and Women-Owned Small".

PART 42—CONTRACT ADMINISTRATION

56. Section 42.302 is amended by revising paragraphs (a)(52) through (a)(55) to read as follows:

42.302 Contract administration functions.

* * * * *

(a) * * *

(52) Review, evaluate, and approve plant or division-wide small, small disadvantaged and women-owned small business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged and women-owned small business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small, small disadvantaged and women-owned small business subcontracting plans, including documentation of compliance with similar plans under prior contracts.

(55) By periodic surveillance, ensure the contractor's compliance with small, small disadvantaged and women-owned small business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.

* * * * *

42.501 [Amended]

57. Section 42.501 is amended in paragraph (b) by removing the word "and" and inserting a comma in its place; and inserting after the word "disadvantaged" the phrase "and women-owned small".

58. Section 42.502 is amended by revising paragraphs (i) and (j) to read as follows:

42.502 Selecting contracts for postaward orientation.

* * * * *

(i) Contractor's status, if any, as a small business, small disadvantaged or women-owned small business concern;

(j) Contractor's performance history with small, small disadvantaged and women-owned small business subcontracting programs;

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES**44.202-2 [Amended]**

59. Section 44.202-2 is amended in paragraph (a)(4) by removing the phrase "labor surplus area or"; removing the words "business concerns and" and inserting a comma in its place; and inserting after the word "disadvantaged" the phrase "and women-owned small".

44.303 [Amended]

59. Section 44.303 is amended in paragraph (e) by removing the phrase "labor surplus area concerns and"; and inserting after the word "disadvantaged" the phrase "and women-owned small".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

60. Section 52.204-00 is added to read as follows:

52.204-00 Women-Owned Business.

As prescribed in 4.603, insert the following provision:

Women-Owned Business (Date)

(a) *Representation.* The offeror represents that it is, is not a women-owned business concern.

(b) *Definition.* "Women-owned business concern," as used in this provision, means a concern which 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; and whose management and daily business operations are controlled by one or more women.

52.216-21 [Amended]

61. Section 52.216-21 is amended in the introductory text of Alternates III and IV by removing the phrase "or labor surplus area".

62. Section 52.219-1 is revised to read as follows:

52.219-1 Small Business Program Representations.

As prescribed in 19.304(a), insert the following provision:

Small Business Program Representations (Date)

-(a)(1) The standard industrial classification (SIC) code for this acquisition is _____ (insert SIC code).

(2) The small business size standard is _____ (insert size standard).

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents and certifies as part of its offer that it is, is not a small business concern.

(2) The offeror represents and certifies as part of its offer that it is, is not a small disadvantaged business concern.

(3) The offeror represents as part of its offer that it is, is not a women-owned small business concern.

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

Small disadvantaged business concern, as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.

Women-owned small business concern, as used in this provision, means a small business concern at least 51 percent owned by a woman or women or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(d) *Notice.* Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

- (1) Be punished by imposition of fine, imprisonment, or both;
- (2) Be subject to administrative remedies, including suspension and debarment; and
- (3) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

52.219-2 thru 52.219-5 [Reserved]

63. Sections 52.219-2 through 52.219-5 are removed and reserved.—
64. Section 52.219-6 is amended by revising Alternate I to read as follows:

52.219-6 Notice of Total Small Business Set-Aside.

* * * * *

Alternate I (DATE). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.503-3(e), delete paragraph (c).

65. Section 52.219-7 is amended by revising the date of the clause; in paragraph (a) by removing the definitions *Labor surplus area*, *Labor surplus area concern*, and *Perform substantially in labor surplus areas*; and

by revising paragraphs (b)(4) and (c) and Alternate I to read as follows:

52.219-7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (Date)

* * * * *

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

* * * * *

(c) Agreement. For the set-aside portion of the acquisition, a manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (DATE). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.503-3(e), delete paragraph (c).-

66. Section 52.219-8 is amended by revising the section heading; the clause title and date; paragraph (a); redesignating paragraph (d) as (e) and revising it; and adding a new paragraph (d) to read as follows:

52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.

* * * * *

Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (Date)

(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women 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, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

* * * * *

(d) The term "small business concern owned and controlled by women" shall mean a small business concern (i) which 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, and (ii) whose management and daily business operations are controlled by one or more women, and;

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

(End of clause)

67. Section 52.219-9 is amended by revising-

- a. The section heading;
b. The clause title and date;
c. The first sentence of paragraph (c);
d. Paragraphs (d), (e), (i), and Alternate I to read as follows:

52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Date)

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. * * *

(d) The offeror's subcontracting plan shall include the following:-

- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors. 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.
(2) A statement of-

- (i) Total dollars planned to be subcontracted;
(ii) Total dollars planned to be subcontracted to small business concerns;
(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(iv) 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) small disadvantaged business concerns and (iii) women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, 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, small disadvantaged and women-owned small business concerns trade associations).-

(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, (ii) small disadvantaged business concerns and (iii) women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offerors 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, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization Of Small, Small Disadvantaged And Women-Owned Small Business Concerns in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged and women-owned small business 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, guides, and other data that identify small, small disadvantaged and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) whether women-owned small business concerns were solicited and if not, why not, and (D) 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, and (C) conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.

(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 company or division-wide annual plans need not comply with this requirement.

(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, small disadvantaged 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 Contractors lists of potential small, small disadvantaged 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, small disadvantaged and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as 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.

* * * * *

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small, Small Disadvantaged And Women-Owned Small Business Concerns," or (2) an approved plan required

by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (DATE). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

52.219-10 [Amended]

68. Section 52.219-10 is amended in—

a. The section heading and clause title by removing "for Small and Small Disadvantaged Business Concerns" and revising the date;

b. The introductory text of the clause by removing the text following "19.708(c)(1)," and inserting in its place "insert the following clause:";

c. Paragraph (a) of the clause by removing the word "and", inserting a comma in its place, and removing the period at the end of the sentence and inserting in its place "and a certain percentage to women-owned small business concerns."

52.219-13 [Reserved]

69. Section 52.219-13 is removed and reserved.

70. Section 52.219-16 is amended by revising the section heading, clause title and date; paragraph (a); the first sentence of paragraph (b); and paragraphs (d) and (f) to read as follows:

52.219-16 Liquidated Damages—Subcontracting Plan.

* * * * *

Liquidated Damages—Subcontracting Plan (Date)

(a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial products 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 (c) 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, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the Contractor shall pay the Government liquidated damages in an amount stated. * * *

* * * * *

(d) With respect to commercial products plans; *i.e.*, company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

* * * * *

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

52.219-22 [Reserved]

71. Section 52.219-22 is removed and reserved.

72. Section 52.219-00 is added to read as follows:

52.219-00 Notice of Total Small Disadvantaged Business Set-Aside.

As prescribed in 19.508(g), insert the following clause in solicitations and contracts:

Notice of Total Small Disadvantaged Business Set-Aside (Date)

(a) *Definition—Small disadvantaged business concern*, as used in this clause, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.

(b) *General*—(1) Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not

small disadvantaged business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.

(c) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small disadvantaged business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

Alternate 1 (Date). When the acquisition is for a product in a class for which the contracting officer has determined that there are no small disadvantaged business manufacturers or processors in accordance with 19.503-2(c), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

73. Section 52.220-1 is redesignated as 52.219-01 and revised to read as follows:

52.219-01 Priority for Labor Surplus Area Concerns.

As prescribed in 19.304(b), insert the following provision:

Priority for Labor Surplus Area Concerns (Date)

(a) The offeror's status as a labor surplus area concern may affect entitlement to award in case of tie offers. In order to determine whether the offeror is entitled to a priority, the offeror must identify, below, the LSA in which the costs to be incurred on account of manufacturing or production (by the offeror or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(b) Failure to identify the labor surplus areas as specified above will preclude the offeror from receiving priority consideration. If the offeror is awarded a contract as a result of receiving priority consideration under this clause and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

74. Section 52.219-02 is added to read as follows:

52.219-02 Notice of Evaluation Preference for Small Disadvantaged Business Concerns.

As prescribed in 19.1103, insert the following clause:

Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Date)

(a) *Definition—Small disadvantaged business concern,* as used in this clause, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.

(b) *Evaluation preference—*(1) Offers will be evaluated by adding a factor of ten percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns, which have not waived the preference;

(ii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded;

(iii) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The ten percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the ten percent factor. The ten percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than ten percent.

(c) *Waiver of evaluation preference.* A small disadvantaged business may elect to waive the preference, in which case the ten percent factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference.

(d) *Agreements—*(1) A small disadvantaged business concern which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract

performance will be spent for employees of the concern.—

(ii) Supplies, at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern.

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns.

Alternate 1 (Date). When the acquisition is for a product in a class for which the contracting officer has determined that there are no small disadvantaged business manufacturers or processors in accordance with 19.503-2(c), substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

52.220-1 [Redesignated]

52.220-2, 52.220-3, and 52.220-4 [Removed and reserved]

75. Sections 52.220-2, 52.220-3, and 52.220-4 are removed and reserved.

PART 53—FORMS

76. Section 53.219 is revised to read as follows:

53.219 Small business programs.

The following standard forms are prescribed for use in reporting small, small disadvantaged and women-owned small business subcontracting data, as specified in part 19:

(a) *SF 294 (REV XX), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV XX), Summary Subcontract Report.* (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the loose-leaf edition of the FAR.

77. Sections 53.301-294 and 53.301-295 are revised to read as follows:

53.301-294 Subcontracting Reporting for Individual Contracts.

BILLING CODE 6820-34-P

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
 (Whole dollar amounts should be indicated. See instructions on reverse)

OMB No.: 9000-0006
 Expires: 09/30/95

Public reporting burden for this collection of information is estimated to average 5.73 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0006), Washington, DC 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.	1. REPORTING PERIOD: <input type="checkbox"/> OCT 1 - MAR 31 FY _____ <input type="checkbox"/> APR 1 - SEP 30	2. TYPE OF REPORT <input type="checkbox"/> REGULAR <input checked="" type="checkbox"/> FINAL <input type="checkbox"/> REVISED	3. DATE SUBMITTED _____ 4. REPORT NO. _____
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REPORT SUBMITTED AS: <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUBCONTRACTOR	6. AGENCY OR CONTRACTOR AWARDING CONTRACT (Name, Address and ZIP Code)	7. REPORTING CONTRACTOR (Name, Address, and ZIP Code)
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DATES OF CONTRACT PERIOD OF PERFORMANCE (MM/DD/YY) FROM: _____ TO: _____ PRIME CONTRACT AND SUBCONTRACT NO. (if applicable)	12A. EST. AMT. OF SUBCONTRACT AWDS. UNDER ORIG. CONTRACT \$ _____	12B. REV. AMT. OF SUBCONTRACT AWDS. UNDER MOD. CONTRACT (if applicable) \$ _____
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10. ADMINISTERING AGENCY (if other than Awarding Agency)	13A. ORIGINAL GOALS	DOLLARS	PERCENT
	1. SMALL BUSINESS CONCERNS		
	2. SMALL DISADV. BUSINESS CONCERNS		
11A. ORIGINAL CONTRACT AMOUNT \$ _____	11B. REVISED CONTRACT AMOUNT (if applicable) \$ _____	13B. REVISED GOALS (if applicable)	
		1. SMALL BUSINESS CONCERNS	
		2. SMALL DISADV. BUSINESS CONCERNS	
13C. WOMEN-OWNED SMALL BUSINESS CONCERNS			

4. GOAL AMOUNTS IN 13A AND 13B
 DO INCLUDE INDIRECT COSTS DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

DIRECT SUBCONTRACT AWARDS	THIS REPORTING PERIOD		CUMULATIVE <i>(From beginning of Subcontract Plan)</i>	
	DOLLARS	PERCENT	DOLLARS	PERCENT
5A. SMALL BUSINESS CONCERNS (\$ amt. and % of 55C)				
5B. LARGE BUSINESS CONCERNS (\$ amt. and % of 15C)				
5C. TOTAL (Sum of 5A and 5B)		100		100
6. SMALL DISADVANTAGED BUSINESS CONCERNS (\$ amt. and % of 15C)				
7. WOMEN-OWNED SMALL BUSINESS CONCERNS (\$ amt. and % of 15C)				

INDIRECT SUBCONTRACT AWARDS	THIS REPORTING PERIOD		CUMULATIVE <i>(From beginning of Subcontract Plan)</i>	
	DOLLARS	PERCENT	DOLLARS	PERCENT
8A. SMALL BUSINESS CONCERNS				
8B. LARGE BUSINESS CONCERNS				
8C. SMALL DISADVANTAGED BUSINESS CONCERNS				
8D. WOMEN-OWNED SMALL BUSINESS CONCERNS				

9. REMARKS: (Enter a short narrative explanation if: (a) Small Business, Small Disadvantaged Business, or Women-Owned Small Business accomplishments fall below that which would be expected using a straight line projection of goals through the period of contract performance or (b) either goal is not met if this is the final report.)

3. TYPED NAME AND TITLE OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	SIGNATURE	TELEPHONE NO. ()
1. TYPED NAME AND TITLE OF APPROVING OFFICER	SIGNATURE	DATE

GENERAL INFORMATION

1. This form collects subcontract data from Federal contractors and subcontractors that: (a) hold one or more contracts over \$500,000 (\$1 million for construction); and (b) are required to report subcontract awards to small business (SB), small disadvantaged business (SDB), and women-owned small business (WOSB) concerns under a subcontracting plan pursuant to the Small Business Act of 1958.

2. Reports shall be submitted to the contracting officer semi-annually during the period of contract performance. A separate report is required for each contract at contract completion. This report is due by the 30th day of the month following the close of the reporting periods. In accordance with instructions contained in the contract or subcontract, or as directed by the contracting officer. Reports are required when due, including negative reports (i.e., when there has been no subcontracting activity or there has been no change from the last reporting period).

3. This report should not be submitted by small business concerns.

4. This report is not required for commercial products for which a company-wide annual plan has been approved. The Summary Subcontract Report (SF 295) is required for commercial products in accordance with instructions on that form.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. All dollar amounts shall be rounded to the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.

SPECIFIC INSTRUCTIONS
(for items which are not self-explanatory)

ITEM 1: Check the appropriate block for the reporting period through which the report is being submitted and enter the Federal fiscal year (October 1 through September 30). Leave blank if this is a final report.

ITEM 2: Check whether report is a regular report or final report and/or is a revision.

ITEM 4: Specify the sequential report covering this contract. The initial report shall be identified as Report Number 1.

ITEM 5: Check whether the reporting contractor is reporting as a Federal Prime contractor or a subcontractor.

ITEM 6: Enter the name and address of the Federal Department or Agency awarding the contract, or the prime contractor awarding the subcontract.

ITEM 7: Enter the name and address of the contractor submitting the report.

ITEM 8: Enter the beginning and projected ending dates of the period of performance of the contract, including price option periods.

ITEM 10: Identify the Federal agency administering the contract if other than the awarding agency. If DOD is the administering agency, identify the appropriate military department, i.e., Army, Navy, Air Force, or Defense Logistics Agency. This item is not required if reporting as a subcontractor.

ITEM 11A: Enter the total dollar value of the original contract. (State the estimated cost if cost-type contract, price-fixed-price contract, and maximum contract amount if indefinite quantity contracts include all priced options.)

ITEM 11B: If the dollar value of the original contract has been modified, enter the revised contract amount.

ITEM 12A: Enter the estimated dollar value of subcontracts as set forth in the Subcontracting Plan in the original contract.

ITEM 12B: If the dollar value of the Subcontracting Plan has been modified, enter the revised amount under the modified contract.

ITEM 13A: Enter in the appropriate blocks the dollar amount and percent of the reporting contractor's total planned subcontract awards contractually agreed upon as goals for subcontracting with SB, SDB, and WOSB concerns. NOTE: In 13A(1) the amounts entered should include planned subcontracting with SB, SDB, and WOSB concerns. In 13A(2) the amounts entered should reflect planned subcontracting with SDB concerns, including women-owned SDBs. (For DOD contracts, include planned subcontract awards to Historically Black Colleges and Universities or Minority Institutions (HBCUs/MIs) in 13A(1)

and 13A(2). In 13A(3) the amounts entered should reflect planned subcontracting with WOSB concerns, including women-owned SDBs.

ITEM 13B: If the original goals agreed upon at contract award have been revised as result of contract modifications, the amounts entered should reflect those revised goals. NOTE: in 13B(1), the amounts should include planned subcontracting with SB, SDB, and WOSB concerns, if applicable. In 13B(2) the amounts entered should reflect planned subcontracting with SDB concerns, including women-owned SDBs. (For DOD contracts, include planned subcontract awards to HBCUs/MIs in 13B(1) and 13B(2).) In 13B(3) the amount entered should reflect planned subcontracting with WOSB concerns, including women-owned SDBs.

ITEM 14: Check the appropriate block to indicate whether indirect awards are included in the goal amounts entered in items 13A and 13B as specified in the Subcontracting Plan.

ITEM 15A: Enter the dollar amount and percent of subcontracting with SB concerns, including subcontracting with SDB and WOSB concerns for this period and cumulatively. This item reflects progress toward Small Business goal accomplishment indicated in items 13A(1) and 13B(1) (if applicable), and includes indirect awards if such costs are included in goal amounts. For DOD contracts include subcontract awards to HBCUs/MIs.

ITEM 15B: Enter the amounts for subcontracting with large business concerns (including subcontracts with non-profit, educational institutions, and state/local governments) for this period and cumulatively. Include indirect awards if such costs are included in goal amounts.

ITEM 15C: Total the dollar amounts of items 15A and 15B.

ITEM 16: Enter the dollar amount of subcontracting with SDB concerns (including women-owned SDBs) only (for DOD include subcontracts with HBCUs and MIs) and the percent that this amount represents of total subcontracting for this period and cumulatively. This item reflects progress toward Small Disadvantaged Business goal accomplishment as indicated in Item 13A(2) or 13B(2) (if applicable), and includes indirect awards if such costs are included in goal amounts.

ITEM 17: Enter the dollar amount of subcontracting with WOSB concerns (including women-owned SDBs). This item reflects progress toward women-owned Small Business goal accomplishment as indicated in Item 13A(3) or 13B(3) (if applicable), and includes indirect awards if such costs are included in goal amounts.

ITEM 18: For DOD activities, if indirect awards are included in goal amounts (as indicated in item 14), enter the dollar amount of indirect subcontracting with SB (including SDB, WOSB, and HBCUs/MIs), Large Business, SDB, (including HBCUs/MIs), and WOSB concerns. These amounts are subsets of items 15A, 15B, 16, and 17, respectively, and represent the portion of goal achievement being accomplished by indirect subcontracting.

ITEM 19: Enter the name, title, signature and telephone number of the reporting contractor's administrator responsible for monitoring the Subcontracting Plan.

ITEM 20: The approving officer shall be the senior official of the company, division, or subdivision (plant or profit center) responsible for contract performance.

DEFINITIONS

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.

3. Direct Subcontract Awards are those which are identified with the performance of a specific government contract, including the allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined the identified to specific Government contracts.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 09/30/95

Public reporting burden for this collection of information is estimated to average 16.21 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0007), Washington, DC 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.		1. REPORTING PERIOD (check one): A. DOD FEDERAL FY 19 QUARTER ENDING: <input type="checkbox"/> DEC 31 <input type="checkbox"/> JUN 30 <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEP 30		B. CIVILIAN <input type="checkbox"/> ANNUAL (OCT 1 - SEP 30) (except commercial product) FEDERAL FY 19 _____		2. TYPE OF REPORT <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED	
3. CONTRACTING AGENCY				4. ADMINISTERING AGENCY (if different from Item 3)			
5. DATE OF LAST GOV. REVIEW		6. REVIEWING AGENCY		7. CONTRACTOR ESTABLISHMENT CODE (if available)		8. REPORT SUBMITTED AS: <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> BOTH	
9. CORPORATION, COMPANY OR SUBDIVISION COVERED (Name, Address, ZIP Code)				10. MAJOR PRODUCTS OR SERVICE LINES			

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report in whole dollars)

SUBCONTRACT AWARDS	CURRENT FY (Through Reporting Qtr):		SAME PERIOD LAST YEAR	
	DOLLARS	PERCENT	DOLLARS	PERCENT
11A. SMALL BUSINESS CONCERNS (\$ amt. and % of 11C)				
11B. LARGE BUSINESS CONCERNS (\$ amt. and % of 11C)				
11C. TOTAL (Sum of 11A and 11B)		100		100
12. SMALL DISADVANTAGED BUSINESS CONCERNS (\$ amt. and % of 11C)				
13. WOMEN-OWNED SMALL BUSINESS CONCERNS (\$ amt. and % of 11C)				
14. HIST. BLACK COLLEGES & UNIV/MINORITY INST.				
15. REMARKS				

SUBCONTRACT GOAL ACHIEVEMENT
(Report in whole dollars)

CONTRACTS	NO. OF CONTRACTS WITH GOALS	TOTAL \$ VALUE OF SUBCONTRACTS AWARDED	\$ VALUE OF SUBCONTRACT GOALS	ACTUAL GOALS ACHIEVEMENT	
				DOLLARS	%
16. CONTRACTS WITH SMALL BUSINESS SUBCONTRACT GOALS	A. ACTIVE CONTRACTS				
	B. CONTRACTS COMPLETED THIS QTR. (1) WHICH MET GOALS (2) NOT MEETING GOALS				
17. CONTRACTS WITH SMALL DISADV. BUSINESS SUB-CONTRACT GOALS	A. ACTIVE CONTRACTS				
	B. CONTRACTS COMPLETED THIS QTR. (1) WHICH MET GOALS (2) NOT MEETING GOALS				
18. CONTRACTS WITH WOMEN-OWNED SMALL BUSINESS CONCERNS	A. ACTIVE CONTRACTS				
	B. COMPLETED THIS QTR. (1) WHICH MET GOALS (2) NOT MEETING GOALS				
19. NAME AND TITLE OF LIAISON OFFICER		SIGNATURE	DATE	TELEPHONE NO. ()	
20. NAME AND TITLE OF THE APPROVING OFFICER		SIGNATURE	DATE		

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV.)
Prescribed by USA-FAR (48 CFR) 53.219(b)

GENERAL INSTRUCTIONS

1. This form collects subcontract data from Federal contractors and subcontractors that: (a) hold one or more contracts over \$500,000 (\$1 million for construction); and (b) are required to report subcontract awards to Small Business (SB), Small Disadvantaged Business Concerns (SDB), and Women-Owned Small Business Concerns (WOSB) under a subcontracting plan pursuant to the Small Business Act of 1958.
2. This 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 awarding the contract. However, after submission of the first report on this form, the reporting organization shall submit succeeding reports on the same basis.
3. If a reporting organization is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (\$1 million for construction) and contains a subcontracting plan. (See special instructions for commercial products plans.)
4. For DOD activities, reports shall be submitted quarterly, except that, for contracts covered by an approved company-wide subcontracting plan for commercial products, reports shall be submitted annually. Reports are due 30 days after the close of each reporting period. For civilian agencies, reports shall be submitted annually. For civilian agencies, reports are due 30 days after the close of the fiscal year (September 30). See special instructions for commercial products plans below.
5. All dollar amounts shall be rounded to the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.
6. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.
7. Subcontract award data reported on this form shall be limited to awards made by the reporting organization to its immediate subcontractors. Reporting organizations may not take credit for awards made by lower tier subcontractors.
8. Attach a narrative to this report if (a) zero is entered in blocks 11A, 12, or 13 for the current fiscal year, (b) the percent entry in block 11A for current fiscal year is more than 5 percentage points below the percentage reported for the same period last year, or (c) the percent entry in block 12 or 13 for the current fiscal year is lower than the percent reported for the same period last year.

SPECIFIC INSTRUCTIONS

- ITEM 2: Check whether report is a regular report or final report and/or revision. Final report should be checked only if contractor has completed all Government contracts containing subcontracting plans.
- ITEM 3: If reporting as a "Prime Contractor" or "Both" in Item 8, identify the agency (e.g., DOD, HUD, GSA, etc.) which awarded the prime contract(s) to the reporting organization. If reporting as a "Subcontractor" in Item 8, identify the department or agency responsible for the prime contract award(s) which resulted in the largest dollar value subcontract of those subcontracts reflected in this report.
- ITEM 4: Identify the department or agency performing contract administration over the reporting organization (if different from Item 3). For DOD contracts enter the military department or agency which has responsibility for the subcontracting program of the reporting entity (i.e., Army, Navy, Air Force, or Defense Logistics Agency), not the "Office of the Deputy Secretary of Defense."
- ITEMS 5 & 6: Enter the date of the last formal subcontract review conducted by the cognizant department or agency Small and Disadvantaged Business Specialist or other review personnel. For DOD, also identify the military department or Defense Contract Administration Service that conducted the review. In those cases where the Small Business Administration conducted its own review, enter "SBA" and the date.
- ITEM 7: Enter the nine position number that identifies the contractor establishment, if available.
- ITEM 8: Check whether the reporting organization is reporting as a Federal prime contractor or a subcontractor or both.
- ITEM 9: Enter the name and address of the reporting organization, corporation, company, or subdivision thereof which is covered by the data submitted.
- ITEM 10: Identify the major product or service lines of the reporting organization.
- ITEMS 11 & 12: These entries include all subcontract awards, both those made under contracts with plans and goals and those made under contracts which do not have plans and goals. Amounts reported include both direct awards and an appropriately prorated portion of indirect awards. Base the indirect portion on the percentage of work being performed for the organization to which the report is being submitted (shown in Item 3) in relation to other work being performed by the reporting organization. Do not include awards made in support of commercial business being performed by the reporting entity. For DOD activities, report on a quarterly cumulative basis until the end of the fiscal year (September 30) and begin a new quarterly reporting cycle each October 1.

ITEM 11A: Report all subcontract awards to SBs (including subcontracts with SDB: and WOSBs) regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. (For DOD, NASA, and Coast Guard contracts, include subcontracting awards to Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

ITEM 11B: Report all subcontract awards to large business, regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD, NASA and Coast Guard contracts, exclude subcontracting awards to HBCUs and MIs.

ITEM 12: Report all subcontract awards to SDBs (including Women-Owned SDBs) regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

ITEM 13: Report all subcontract awards to WOSBs (including Women-Owned SDBs) regardless of dollar value made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor.

ITEM 14: For DOD, enter the dollar value of all subcontracts with HBCUs/MIs. This is a subset of awards to SDBs (Item 12).

ITEMS 16, 17, & 18: For each item (if applicable), enter the number of prime and subcontracts valued over \$500,000 (\$1 million for construction) which have goals, the dollar value of all subcontracts awarded to date under these contracts, the dollar value of subcontract goals, as set forth in subcontracting plan, and for completed contracts, your actual goal achievement expressed in dollars and percent of goal. The percentage of actual goal achievement is determined by dividing the amount of dollars shown in the column entitled "Actual Goal Achievement" by the dollars shown in the column entitled "Subcontract Goals." Information presented in this section represents subcontract awards from the inception of the contract(s) and is not restricted to this fiscal year. The percentages reported in Items 16B(1), 17B(1), and 18B(1) will always be 100 or more and the percentages reported in Items 16B(2), 17B(2) and 18B(2) will always be less than 100.

ITEM 19: The liaison officer shall be the reporting contractor's official responsible for administering the subcontracting program.

ITEM 20: The approving officer shall be the chief executive officer or in the case of a separate division or plant, the senior individual responsible for overall division plant operations.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. Reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall submit this report annually as of September 30 each year.
2. The annual report shall include all subcontracting activity under commercial products plans in effect during the Government fiscal year and shall be submitted in addition to required reports for other than commercial products, if any.
3. Enter in Items 13 and 12 the total of all subcontract awards under the reporting organization's commercial products plans. Show in Item 16 or in an attachment, the percentage of this total attributable to each agency from which contracts for such commercial products were received. Send a copy of this report to each agency on that listing.
4. Do not complete Items 16, 17, and 18.

DEFINITIONS

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.
2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.
3. Direct Subcontract Awards are those which are identified with the performance of a specific Government contract, including allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.
4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.