

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

**48 CFR Parts 2, 4, 7, 8, 9, 10, 13, 15,
16, 19, 42, and 52**

**[FAR Case 2014–002; Docket No. 2014–
0002, Sequence No. 1]**

RIN 9000–AM93

**Federal Acquisition Regulation: Set-
Asides Under Multiple-Award
Contracts**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),
and the National Aeronautics and Space
Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are
proposing to amend the Federal
Acquisition Regulation (FAR) to
implement regulatory changes made by
the Small Business Administration,
which provide Government-wide policy
for partial set-asides and reserves, and
setting aside orders for small business
concerns under multiple-award
contracts.

DATES: Interested parties should submit
written comments to the Regulatory
Secretariat Division at one of the
addresses shown below on or before
February 6, 2017 to be considered in the
formation of the final rule.

ADDRESSES: Submit comments in
response to FAR case 2014–002 by any
of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2014–002.” Select the link “Comment Now” that corresponds with “FAR Case 2014–002.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2014–002” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014–002, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868 or by email at mahruba.uddowla@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2014–002.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA are proposing to revise the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule at 78 FR 61114, dated October 2, 2013, regarding the use of small business partial set-asides, reserves, and orders placed under multiple-award contracts. SBA’s final rule implements the statutory requirements set forth at section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)), (Jobs Act).

The Jobs Act, signed into law by President Obama on September 27, 2010, was a landmark event aimed at reenergizing small business entrepreneurship. It provided an array of tools to enhance small business participation in Federal procurement. In particular, section 1331 of the Jobs Act, the focus of this rule, provided authority for three acquisition techniques to facilitate contracting with small businesses on multiple-award contracts:

- (1) Setting aside part or parts of the requirement for small businesses.
- (2) Reserving one or more contract awards for small business concerns under full and open multiple-award procurements.
- (3) Setting aside orders placed against multiple-award contracts, notwithstanding the fair opportunity requirements of 10 U.S.C. 2304c(b) and 41 U.S.C. 4106(c).

Multiple-award contracts, due to their inherent flexibility, competitive nature, and administrative efficiency, are commonly used in Federal procurement. They have proven to be an effective means of contracting for large quantities of supplies and services for which the quantity and delivery requirements cannot be definitively determined at contract award. However, prior to 2011, the FAR was largely silent on the use of acquisition strategies to promote small business participation in

conjunction with multiple-award contracts.

DoD, GSA, and NASA published an interim rule in the **Federal Register**, at 76 FR 68032, on November 2, 2011, under FAR Case 2011–024, so that Federal agencies could begin taking advantage of the authorities set forth in section 1331 while SBA developed rules with additional detail on the use of these tools. DoD, GSA, and NASA intended to provide more complete guidance after publication of SBA’s final rule.

This proposed rule provides additional guidance on the use of partial set-asides, reserves, and set-asides of orders under multiple-award contracts, based on SBA’s final rule published in the **Federal Register** at 78 FR 61114, dated October 2, 2013. It also clarifies agencies’ and small business contractors’ responsibilities with respect to performance of work requirements, *i.e.*, the limitations on subcontracting and the nonmanufacturer rule. Inasmuch as small businesses have this preference, compliance with the limitations on subcontracting and the nonmanufacturer rule is essential to assure that the small business contractor performs the appropriate percentage of requirements in contracts or orders that have been set aside, in total or in part, and is not acting as a pass-through.

Because the interim rule described above to implement section 1331 of the Jobs Act has already authorized agencies to use partial set-asides, reserves, and order set-asides under multiple award contracts, agencies are encouraged to provide feedback on their use of these tools to date and how their use of the tools compares to the guidance and procedures outlined in this proposed rule.

II. Discussion and Analysis**A. Analysis of Public Comments**

DoD, GSA, and NASA reviewed the comments to the FAR interim rule in development of this proposed rule. Many of the public comments submitted in response to the interim rule have been overcome by events, primarily the issuance of SBA’s final rule. A discussion of the comments is as follows:

- *Clarification of new multiple-award contract procedures.*

Comment: Many respondents indicated that the guidance provided in the interim rule lacked clarity.

Response: The intent of the interim rule was to provide authority to Federal agencies for using the new acquisition tools established by section 1331 (15 U.S.C. 644(r)) as quickly as possible,

allowing time for SBA to complete the drafting, coordination, and publication process for its forthcoming, more explicit, regulatory guidance. SBA has since completed these efforts and published the requisite regulatory changes in its final rule (78 FR 61114, dated October 2, 2013). This proposed rule implements the regulatory changes in SBA's final rule and provides more in-depth guidance in the FAR.

One respondent pointed out that the prescription for new FAR clause 52.219–13, Notice of Set-Aside of Orders, states the purpose of including the clause but not the types of solicitations and contracts in which inclusion of 52.219–13 is required. Language has been added in the proposed rule clarifying the circumstances under which clause 52.219–13 should be used.

- *Updating of Federal data systems.*

Comment: A few respondents mentioned that Federal data systems such as the Federal Procurement Data System (FPDS) and FedBizOpps do not presently have the capability to accept the new data inputs associated with the implementation of section 1331 (15 U.S.C. 644(r)).

Response: This concern is duly noted. The system enhancements needed to accommodate the new data requirements are in process.

- *Application of the limitations on subcontracting to multiple-award contracts.*

Comment: A number of respondents pointed out that the limitations on subcontracting requirements only come into play when a small business receives a contract award under a small business set-aside and should not apply when a small business receives a contract award under a full and open solicitation, even when the award was made pursuant to a reserve under a full and open, multiple-award solicitation.

Response: The interim rule did not change the basic requirements for the application of the limitations on subcontracting, *i.e.*, the limitations on subcontracting restrictions only apply when the small business contractor received the award as the result of a solicitation that limited the field of potential offerors to small businesses. SBA, in its final rule, further clarified that the limitations on subcontracting do not apply to contract reserves but will apply to orders that are set aside under such contracts.

- *Written justifications for small business set-asides.*

Comment: One respondent stated that a written justification should be required for order set-asides under multiple-award contracts.

Response: The interim rule did not change FAR subpart 6.2, which provides that a written justification is not required for small business set-asides or set-asides to any small business concern participating in the socioeconomic programs identified at FAR 19.000(a). In addition, section 1331 (15 U.S.C. 644(r)) established an exception to the fair opportunity requirements for set-asides of orders under multiple-award contracts, which was incorporated into FAR subparts 8.4 and 16.5 under the interim rule. However, contracting officers are required to adhere to the criteria at FAR 19.502–2 to determine whether or not a small business set-aside is feasible before proceeding with this acquisition strategy.

- *Mandatory set aside of orders below the simplified acquisition threshold.*

Comment: A number of respondents stated that 15 U.S.C. 644(j) requires orders between the micropurchase threshold and the simplified acquisition threshold to be automatically set aside for small business, and recommended amendments to the FAR to ensure this.

Response: The interim FAR rule was published in advance of SBA's own rulemaking to provide authority for contracting officers to use the new acquisition tools established in section 1331 (15 U.S.C. 644(r)) as quickly as possible. The proposed FAR rule implements the regulatory changes provided in SBA's final rule, including clarification of the procedures for setting aside task and delivery orders under multiple-award contracts. SBA's rule does not require orders to be set aside.

- *Out-of-scope comments.*

Comment: A number of respondents submitted comments that are out of scope of both the interim rule and this proposed rule. These comments ranged from updating the clause matrix for clauses other than those prescribed in FAR part 19 to providing guidance on contractor team arrangements under Federal Supply Schedules to concerns associated with the bundling of requirements.

Response: No changes were made for the out-of-scope comments.

B. Summary of Significant Changes

- *Partial set-asides.*

The proposed rule clarifies the distinction between the use of partial set-asides on multiple-award contracts and partial set-asides on all other contracts. Section 1331 only addresses multiple-award contracts and provides that partial set-asides should be considered when market research indicates a total set-aside is not feasible, and the acquisition can be divided into

smaller discrete portions or categories which can then be set aside with the reasonable expectation of obtaining adequate competition from small business, and a fair market price. For all other contracts, the Small Business Act already mandated that partial set-asides be considered when market research indicates a total set-aside is not feasible, and the acquisition can be divided into smaller discrete portions or categories which can then be set aside with the reasonable expectation of obtaining adequate competition from small business, and a fair market price. The proposed rule expands on the current guidance provided in the FAR for the use of partial small business set-asides and initiates changes to improve the overall process. Most significantly, small businesses will no longer be required to submit an offer on the non-set-aside portion of a solicitation in order to be considered for the set-aside portion of the solicitation.

- *Reserves.*

The proposed rule adds substantial coverage for the new concept of a "reserve". Reserves are used in solicitations for a multiple-award contract when a total or a partial set-aside of the work is not feasible, but the agency wants to be sure that small businesses participate at the prime contract level.

- *Orders under multiple-award contracts.*

The proposed rule builds on the guidance provided in the FAR interim rule, published in the **Federal Register** at 76 FR 68032, on November 2, 2011, for setting aside orders under multiple-award contracts and provides several new methodologies to complement various acquisition conditions. For example, in solicitations employing a partial set-aside of a multiple-award contract, the contracting officer may establish terms and conditions in the solicitation and resultant contract providing that all subsequent task or delivery orders are set aside for any of the small businesses awarded contracts under the set-aside portion. Or, the contracting officer may state in the solicitation and resultant contract that the determination to set aside an order will be made on a case-by-case basis. This flexibility allows the contracting officer to employ the ordering technique that is best suited to the surrounding acquisition environment.

- *Assignment of NAICS codes and size standards.*

The proposed rule provides new guidance for assigning North American Industry Category System (NAICS) codes in solicitations that will result in

multiple-award contracts. Contracting officers have the discretion to—

(1) Assign one NAICS code (and corresponding size standard) to the entire solicitation; or

(2) When the procurement can be divided into portions or categories, assign each a NAICS code and corresponding size standard which best describes the principal purpose attributed to the part or category.

• *Application of the limitations on subcontracting and the nonmanufacturer rule.*

The proposed rule moves the nonmanufacturer rule coverage and limitations on subcontracting together in FAR part 19. Collectively referred to as the “performance of work” requirements, these restrictions set forth the contractual obligations of small business concerns awarded contracts or orders by virtue of their small business status. Limitations on subcontracting are the minimum percentages of work the prime small business contractor must itself perform. The limitations currently appear in the clauses; the proposed rule also places them in FAR part 19 for easier reference by contracting officers. In addition, the proposed rule clarifies that compliance with the limitations on subcontracting may be determined by measuring the minimum percentage of work performed at the aggregate contract level or order level. The proposed rule also clarifies that the performance of work requirements do not apply when full and open competition procurement methods are used, including reserves.

C. Other Changes

FAR part 2—Definitions of Words and Terms.

• FAR 2.101, Definitions. The proposed rule revises the definition of “HUBZone contract” to add awards to HUBZone concerns under a reserve in a solicitation for a multiple-award contract. The proposed rule also adds a definition for the term “HUBZone order”.

FAR part 4—Administrative Matters.

• FAR 4.803, Contents of contract files. The proposed rule adds a reference to the documentation requirements in new FAR section 19.506.

• FAR 4.1202, Solicitation provision and contract clause. The proposed rule adds the prescription for use of new Alternate I to FAR provision 52.204–8.

FAR part 7—Acquisition Planning.

• FAR 7.105(b)(1), Sources. The proposed rule makes editorial changes.

FAR part 8—Required Sources of Supplies and Services.

• FAR 8.405–5(b), Small business. The change references the discretionary

authority that ordering contracting officers have to require a contractor to rerepresent its small business size and socioeconomic status for an individual task or delivery order.

FAR part 9—Contractor Qualifications.

• FAR 9.104–3, Application of standards. The proposed rule revises this subsection to clarify when compliance with the limitations on subcontracting factors into the determination of small business offerors’ responsiveness.

FAR part 10—Market Research.

• FAR 10.001, Policy. The proposed rule revises this section to clarify that the results of market research are to be used to determine whether small business programs should be utilized for the acquisition.

• FAR 10.002, Procedures.

○ FAR 10.002(b)(1)(vii). This paragraph has been revised to more clearly require contracting officers to consider small business.

○ FAR 10.002(b)(2)(ix), Procedures.

The proposed rule revises the paragraph to include the review of databases such as the System for Award Management database and SBA’s Dynamic Small Business Search as another technique for conducting market research.

FAR part 13—Simplified Acquisition Procedures.

• FAR 13.003, Policy. The proposed rule makes revisions to this section to remove an obsolete use of the term “reserve”.

FAR part 15—Contracting by Negotiation.

• FAR 15.101–3, Tiered evaluation of small business offers. The proposed rule advises that agencies cannot use a tiered evaluation approach during source selection of a multiple-award contract unless the agency has statutory authority to do so.

FAR part 16—Types of Contracts.

• FAR 16.500, Scope of subpart. A reference has been added for set-asides and reserves.

• FAR 16.505, Ordering. References have been added for protests of order set-asides and for the rerepresentation authority.

FAR part 19—Small Business Programs.

• FAR 19.000, Scope of part. Language has been added to specify that part 19 now includes coverage on reserves.

• FAR 19.001, Definitions. The definition of “nonmanufacturer rule” is removed, and a definition of “nonmanufacturer” is added.

• FAR 19.102, Assignment of North American Industry Classification System codes and small business size

standards. The previous coverage regarding the nonmanufacturer rule has been moved from FAR 19.102(f) to FAR 19.505(c) (for HUBZones, see FAR 19.1308). The revisions in this section reflect a combination of guidance that is currently in the FAR and new guidance that has been added to accommodate the assignment of NAICS codes in solicitations that will result in multiple-award contracts, including guidance for assigning NAICS codes in the subsequent task or delivery orders. Contracting officers have the discretion to—

(1) Assign one North American Industry Category System (NAICS) code (and corresponding size standard), to the entire solicitation; or

(2) When the procurement can be divided into portions or categories, assign each a NAICS code and corresponding size standard which best describes the principal purpose attributed to the portion or category. This is authorized for solicitations issued after January 31, 2017.

• FAR 19.103, Appealing the contracting officer’s North American Industry Classification. This information has been moved from FAR 19.303.

• FAR subpart 19.2, Policies. Guidance is added on duties of the agency small business specialist.

• FAR subpart 19.3, Representations and rerepresentations.

○ 19.301–1, Representation by the offeror. Paragraph (a) of this subsection has been revised to implement SBA’s regulations. These changes underscore SBA’s requirements for representing small business size and socioeconomic status by clarifying that the offeror shall represent at the time of its initial offer, which includes price, that—

(1) It meets the size standard for the NAICS code identified in the solicitation; or

(2) It meets the size standard identified in the solicitation for the specific portion or category on which it intends to make an offer. This direction corresponds to FAR 19.101.

Paragraph (c) of this subsection has been revised to clarify that for awards under the HUBZone program, the offeror must also represent its HUBZone status at time of contract award.

Paragraph (d) adds new language to clarify that a business that represents itself as small at the time of its initial offer, either for the entire contract or for each portion or category it submits an offer on, will then be small for each order issued under the contract, or relevant portion or category.

○ FAR 19.301–2, Rerepresentation by a contractor that represented itself as a

small business concern. The following revisions are proposed by this rule:

(1) Clarification of the requirement for a contractor to rerepresent its size and socioeconomic status for an order issued under a multiple-award contract when the contracting officer specifically requires it to do so.

(2) In the case of a multiple-award contract with more than one assigned NAICS code, clarification that the contractor shall rerepresent that it meets the size standard set forth in each relevant category.

(3) Clarification that an order-level rerepresentation does not change the size representation made to the contract.

(4) Clarification that when a contractor rerepresents as a different type of small business than it represented for award (e.g., a HUBZone small business concern rerepresents as a women-owned small business), an agency may take credit for that contract going forward in its small business prime contracting goal achievements consistent with the rerepresentation (e.g., women-owned small business goal instead of HUBZone small business goal).

○ FAR 19.303, Determining North American Industry Classification System codes and size standards. The language currently in this section has been moved to FAR 19.102 and FAR 19.103.

○ FAR 19.307, Protesting a firm's status as a service-disabled veteran-owned small business concern. The proposed language in paragraph (b)(1) was added to bring the FAR into alignment with SBA's regulations at 13 CFR 125.8(b). It clarifies that only the contracting officer or SBA may protest the apparently successful offeror's status as a service-disabled veteran-owned small business when award will be made on a sole-source basis.

○ FAR 19.309, Solicitation provisions and contract clauses. The proposed rule adds the prescription for use of new Alternate II to FAR provision 52.219-1.

• FAR subpart 19.4, Cooperation with the Small Business Administration.

○ FAR 19.401, General. The proposed rule adds language clarifying the appropriate point of contact at the Office of Small Business Programs for DoD.

○ FAR 19.402, Small Business Administration procurement center representatives. The proposed rule adds a reference to SBA's regulations for a complete description of the responsibilities of SBA's procurement center representatives.

• FAR subpart 19.5, Small Business Total Set-Asides, Partial Set-Asides and Reserves. The title of this subpart has

been changed to reflect the addition of guidance regarding reserves.

○ FAR 19.501, General. The proposed rule clarifies that reserves may only be used in solicitations that will result in multiple-award contracts and provides the name of the appropriate office in agencies that have cognizance over the agency's small business programs.

Paragraph (h) clarifies that small businesses that receive a contract or order as a result of a set-aside or that receive a sole-source award pursuant to the socioeconomic programs identified at FAR subparts 19.8, 19.13, 19.14, or 19.15 shall comply with the limitations on subcontracting and nonmanufacturing rule requirements set forth in the contract. This material previously appeared in the clauses, and now is also being shown in FAR part 19.

○ FAR 19.502, Setting aside acquisitions. Sections have been moved to place all text related to set-asides in one location: FAR 19.502-6 is moved to FAR 19.502-5; FAR 19.503 through FAR 19.507 have been moved to FAR 19.502-6 through FAR 19.502-10, respectively.

○ FAR 19.502-1, Requirements for setting aside acquisitions. The proposed rule updates the text to reflect that Federal Supply Schedule contracts are not "required sources" under FAR part 8.

○ FAR 19.502-2, Total small business set-asides. The FAR currently requires that the contracting officer expect offers to be received from two small business concerns offering products of different small business concerns before setting aside an acquisition. This requirement has been revised to remove the expectation that the products of different small businesses will be offered.

The proposed rule moves paragraph (c) of this subsection regarding the nonmanufacturer rule. This guidance is now located in FAR 19.505.

○ FAR 19.502-3, Partial set-asides of contracts other than multiple-award contracts.

(1) The proposed rule clarifies that the contracting officer shall specify in the solicitation how offers will be submitted.

(2) The proposed rule removes cumbersome requirements for awarding and evaluating offers for partial set-asides, such as the requirement for awarding the non-set-aside portion of the solicitation prior to awarding the set-aside portion, and the requirement that the contracting officer will conduct negotiations only with those small business offerors that submitted offers on both the non-set-aside and the set-aside portion of the solicitation.

(3) The proposed rule clarifies that the requirements in this subsection apply to contracts other than multiple-award contracts.

○ FAR 19.502-4. Most of the previous coverage at FAR 19.502-4 has been moved to the different sections which now provide guidance on reserves and order set-asides: FAR sections 19.503 and 19.504. New coverage has been added for partial set-asides of multiple-award contracts.

○ FAR 19.502-5. The previous coverage at FAR 19.502-5(b) has been moved to FAR 19.502-3.

○ FAR 19.503, Reserves. The proposed rule implements the policies and procedures provided in SBA's final rule regarding the use of reserves:

(1) The use of a reserve under a multiple-award contract is discretionary. Nevertheless, the contracting officer should consider using a reserve when neither a total set-aside nor partial set-aside is feasible because—

- There is no reasonable expectation of receiving offers from at least two responsible small business concerns, at a fair market price, for the entire requirement; or

- The requirement cannot be divided into discrete portions or categories, or even if it were possible to divide the requirement, there is still no reasonable expectation of receiving offers from at least two responsible small business concerns able to perform any portion of the requirement at a fair market price.

(2) Paragraph (b) of the proposed rule describes the possible outcomes resulting from solicitations using reserves:

- One or more contract awards to any one or more types of small business.

- In the case of a bundled requirement, an award to one or more Small Business Teaming Arrangements.

○ FAR 19.504, Setting aside orders under multiple-award contracts. The proposed rule revises the FAR to provide guidance for using set-asides of task or delivery orders under a multiple-award contract.

(1) Partial set-asides. Only small business concerns awarded contracts under the partial set-aside may compete for orders for those portions that have been set aside.

(2) Reserves. The contracting officer may set aside orders for small business concerns or, when only one small business award was made under the reserve, may issue orders directly to that contractor.

(3) Orders under full and open, multiple-award contracts. The contracting officer is required to specify in the solicitation whether order set-

asides will be discretionary or mandatory. When setting aside orders under a full and open multiple-award contract, the contracting officer has to comply with the requirements of 19.203(b) and (c).

- FAR 19.505, Performance of work requirements. The proposed rule consolidates guidance from other areas of the FAR regarding the application of the limitations on subcontracting and the nonmanufacturer rule for contracts and orders. It also clarifies the compliance period for the limitation on subcontracting for contracts that are set aside, in total or in part, and for orders that are set aside. Similar guidance is provided for 8(a), HUBZones, SDVOSBs, and women-owned small businesses in their respective subparts.

- FAR 19.506, Documentation Requirements. The proposed rule consolidates guidance from other areas of the FAR regarding the documentation requirements that are necessary when a contracting officer does not use a set-aside or reserve.

- FAR 19.507, Solicitation provisions and contract clauses. The revisions proposed for this section have been made to accommodate the new text in FAR 52.219–14(d), a new alternate for FAR 52.219–13 for multiple-award contracts under which order set-asides will be mandatory, a new clause for reserves under multiple-award contracts, and a new clause for the requirements of the nonmanufacturer rule. In addition, the prescription for the use of the basic clause at FAR 52.219–13 is revised to clarify that it is to be used when orders may be set aside under a multiple-award contract, and a prescription is added for the use of Alternate I of FAR 52.219–13.

- FAR subpart 19.6, Certificates of Competency and Determinations of Responsibility. The proposed rule explains that, for the purposes of receiving a Certificate of Competency (COC) as a nonmanufacturer, the small business may furnish any domestically produced or manufactured product. Language has been added to clarify that a contracting officer is not required to issue an award to a contractor that receives a COC if the reason for not doing so is unrelated to responsibility.

- FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program).

- FAR 19.804–2, Agency offering. The proposed rule clarifies that agencies are required to notify SBA of multiple-award contracts that are reserved under the 8(a) program.

- FAR 19.804–6, Indefinite delivery contracts. The proposed rule clarifies that under the 8(a) program, a

contracting officer may issue a sole-source task or delivery order as long as the value of the order is equal to or less than the thresholds at FAR 19.805–1(a)(2), the contract was set aside for exclusive competition among 8(a) participants, and the agency goes through offer and acceptance for the order.

- FAR 19.809–2, Performance of work requirements. The proposed rule clarifies the compliance period for the limitation on subcontracting requirement. In addition, the applicable SBA District Director may permit the 8(a) contractor to exceed the limitations on subcontracting, if it is essential to do so during certain stages of contract performance.

- FAR subpart 19.13, Historically Underutilized Business Zone (HUBZone) Program.

- FAR 19.1307, Price evaluation preference for HUBZone small business concerns. The proposed rule clarifies that the price evaluation preference for HUBZone small business concerns shall not be used when the solicitation for the multiple-award contract has been reserved for a HUBZone small business concern.

- FAR 19.1308, Performance of work requirements. The proposed rule clarifies the compliance period for the limitation on subcontracting requirement. In addition, this section includes the HUBZone nonmanufacturer rule, which currently appears within the HUBZone clause.

- FAR 19.1309 has been amended to consolidate the language regarding the Alternate I version of FAR clauses 52.219–3 and 52.219–4. Language has also been added to direct the contracting workforce to the prescription for the new nonmanufacturer rule clause.

- FAR subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program.

- FAR 19.1407 Performance of work requirements. The proposed rule clarifies the compliance period for the limitation on subcontracting requirement. In addition, the proposed rule now provides information pertaining to the nonmanufacturer rule in this new location.

- FAR subpart 19.15, Women-Owned Small Business (WOSB) Program.

- FAR 19.1506, Performance of work requirements. The proposed rule clarifies the compliance period for the limitation on subcontracting requirement. In addition, the proposed rule provides information regarding the nonmanufacturer rule in this location.

FAR part 42—Contract Administration and Audit Services.

- FAR 42.1503, Procedures. The proposed rule clarifies that contractor past performance evaluations are to include compliance with the limitations on subcontracting, as applicable.

FAR part 52—Solicitation Provisions and Contract Clauses.

- FAR 52.204–8, Annual Representations and Certifications. A new Alternate I has been added to allow small businesses to represent their status as a small business for solicitations of multiple-award contracts that have more than one NAICS code assigned.

- FAR 52.212–1, Instructions to Offerors-Commercial Items. Revises the language to refer offerors to the solicitation for the NAICS code(s) and corresponding size standard(s) assigned to the acquisition instead of limiting the location to the Standard Form 1449.

- FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Conforming changes have been made to accommodate changes made to existing clauses and the incorporation of two new clauses.

- FAR 52.219–1, Small Business Program Representations. A new Alternate II has been added to allow small businesses to represent their status as a small business for solicitations of multiple-award contracts that have more than one NAICS code assigned.

- FAR 52.219–3, Notice of HUBZone Set-aside or Sole Source Award. Adds a new paragraph (e) to allow contracting officers to identify the appropriate compliance period for the limitation on subcontracting requirement.

- FAR 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns. The clause has been revised to exempt solicitations containing a reserve for HUBZone small business concerns from using the price evaluation preference.

- FAR 52.219–6, Notice of Total Small Business Set-Aside. Language relating to the nonmanufacturer rule has been removed, since it will now reside in 52.219–YY.

- FAR 52.219–7, Notice of Partial Small Business Set-Aside. The proposed rule replaces the existing, cumbersome procedures for awarding contracts under the set-aside and non-set-aside portions with the new, more simplified approach. New language has been added for multiple-award contracts to clarify the requirements issuing orders against the set-aside and non-set-aside portions.

- FAR 52.219–13, Notice of Set-Aside of Orders. The clause has been revised to clarify that the basic version is for use when orders may be set aside. In

addition, Alternate I has been created for use when orders will be set aside.

- FAR 52.219–14, Limitations on Subcontracting. The clause has been revised to reflect the changes made at FAR 19.505 to clarify the compliance period for the limitation on subcontracting.
- FAR 52.219–18, Notification Of Competition Limited To Eligible 8(a) Concerns. Language relating to the nonmanufacturer rule has been removed, since it will now reside in FAR 52.219–YY.
- FAR 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. The clause has been revised to reflect the changes made at FAR 19.1407 to clarify the compliance period for the limitation on subcontracting.
- FAR 52.219–28, Post-Award Small Business Program Rerepresentation. New language has been added to advise small businesses they shall rerepresent their size and socioeconomic status for an order issued under a multiple-award contract when explicitly required by the contracting officer. New language has also been added to allow for small businesses to rerepresent their socioeconomic status (*i.e.*, 8(a), small disadvantaged, HUBZone, service-disabled veteran-owned, women-owned) in addition to size.
- FAR 52.219–29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns. The clause has been revised to reflect the changes made at FAR 19.1506 to clarify the compliance period for the limitation on subcontracting.
- FAR 52.219–30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program. The clause has been revised to reflect the changes made at FAR 19.1506 to clarify the compliance period for the limitation on subcontracting.
- In addition, language relating to the nonmanufacturer rule in FAR sections 52.219–3, 52.219–4, 52.219–6, 52.219–7, 52.219–27, 52.219–29, and 52.219–30 has been removed, since it will now reside in the new clause at FAR 52.219–YY.
- FAR 52.219–XX, Notice of Small Business Reserve. This is a new clause to provide notification and guidance to offerors when a solicitation that will result in the award of a multiple-award contract is solicited under full and open procedures, and the contracting officer has provided for a reserve or reserves. The proposed clause provides guidance—

(1) For submitting offers on a reserve to offerors eligible to participate in the reserve; and

(2) Clarifying that the contracting officer may set-aside orders for the small businesses that received awards pursuant to the reserve for small business; or

(3) Clarifying when only one small business concern has received a contract pursuant to a reserve, that the contracting officer may issue orders directly to that small business.

- FAR 52.219–YY, Nonmanufacturer Rule. This new clause is added to provide guidance to offerors regarding the application and requirements of the nonmanufacturer rule.

III. Applicability to Acquisitions Not Greater Than the Simplified Acquisition Threshold, Commercial Items, and Commercial Off-the-Shelf Items

The Federal Acquisition Regulatory Council has made preliminary determinations, in accordance with 41 U.S.C. 1905 and 41 U.S.C. 1906, that the rule will apply to acquisitions under the simplified acquisition threshold (SAT) and acquisitions of commercial items. Discussion of these preliminary determinations is set forth below. The FAR Council will consider public feedback before making a final determination on the scope of the final rule.

The rule will also apply to acquisitions for commercial off-the-shelf (COTS) items. As explained below, no determination is necessary by the FAR Council in connection with applicability to COTS items, because 41 U.S.C. 1907 requires that a law be applied to the acquisition of COTS if the law concerns authorities or responsibilities under the Small Business Act.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT)

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law if—

- The law contains criminal or civil penalties,
- The law specifically refers to 41 U.S.C. 1905 and states that the law applies to contracts and subcontracts in amounts not greater than the SAT, or
- The Federal Acquisition Regulatory Council makes a written determination and finding that it would not be in the

best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

Section 1331 of the Small Business Jobs Act of 2010 is silent on the applicability of the requirements set forth above to acquisitions at or below the SAT and does not provide for criminal or civil penalties. Therefore, under 41 U.S.C. 1905, section 1331 does not apply to SAT acquisitions unless the FAR Council makes a written determination that such application is in the best interest of the Federal Government.

The FAR Council has made a preliminary determination that applicability of the proposed rule to SAT acquisitions is in the best interest of the government for the following reasons. SAT acquisitions are often well suited for performance by small businesses. While few, if any, multiple-award contracts are likely to be in values under the SAT, a very significant portion of orders made under multiple-award contracts could fall below the SAT. In addition, as a result of current legal and regulatory requirements applicable to contracts other than multiple-award contracts, which call for work below the SAT to be set aside for small businesses, most agency practices are already geared towards taking advantage of this important tool in connection with small dollar purchases to maximize small business participation.

B. Applicability to Contracts for the Acquisition of Commercial Items

41 U.S.C. 1906 governs the applicability of laws to the acquisition of commercial items (other than COTS items). Section 1906 generally limits the applicability of new laws when agencies are acquiring commercial items, but provides that such acquisitions will not be exempt from a provision of law if—

- The law contains criminal or civil penalties;
- The law specifically refers to 41 U.S.C. 1906 and states that the law applies to the acquisition of commercial items; or
- The FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt the acquisition of commercial items from the provision of law.

Section 1331 of the Small Business Jobs Act of 2010 is silent on the applicability of the requirements set forth above to contracts for commercial items and does not provide for criminal or civil penalties. Therefore, under 41 U.S.C. 1906, section 1331 does not apply to acquisitions for commercial

items unless the FAR Council makes a written determination that such application is in the best interest of the Federal Government.

In making its initial determination of whether application of section 1331 to commercial items is in the best interest of the Federal Government, the FAR Council considered the following factors: (i) The benefits of the policy in furthering Administration goals, (ii) the extent to which the benefits of the policy would be reduced if an exemption is provided for commercial items, and (iii) the burden on contractors if the policy is applied to acquisitions for commercial items.

With respect to the first factor, this Administration has long recognized the important nexus between maximizing small business participation in federal contracting and having effective tools to promote such participation under multiple-award contracts, including the Federal Supply Schedules, through which a significant portion of federal contract spending flows. The Interagency Task Force on Small Business Contracting, created by the President in 2010 to identify meaningful ways to strengthen small business contracting, recommended that rules on set-asides for multiple-award contracts be clarified. In support of its recommendation, the Task Force noted that set-asides accounted for a substantial portion of all small business contract awards yet “there has been no attempt to create a comprehensive policy for orders placed under either general task-and-delivery-order contracts or schedule contracts that rationalizes and appropriately balances the need for efficiency with the need to maximize opportunities for small businesses.” Shortly after the Task Force released its recommendations, the President signed the Jobs Act to protect the interests of small businesses and expand their opportunities in the Federal marketplace. In addition, as explained in the Background section of this notice, DOD, GSA, and NASA published an interim rule, with SBA’s concurrence, to provide general guidance ahead of SBA providing more specific guidance in its regulations. This action allowed agencies to begin taking advantage of these impactful tools instead of having to wait until more detailed changes were promulgated. In short, the FAR Council believes these tools provide an important benefit in helping agencies to carry out the purposes of the Small Business Act and in helping the government meet its small business contracting goals.

With respect to the second factor (the impact of excluding commercial item

acquisitions on the overall benefits of the underlying policy), the FAR Council believes based on an analysis of FPDS data that a significant amount of spending on new contracts is for commercial item acquisitions and a substantial amount of these activities (including all the transactions through the Federal Supply Schedules) are for commercial items, many of which can be performed by small businesses. Denying agencies the ability to apply the authorities in section 1331 to commercial item acquisitions could result in many missed opportunities for capable small business contractors seeking work in the federal marketplace. For these reasons, the FAR Council believes exclusion could have a material negative impact.

With respect to the third factor, burden on contractors selling commercial items, there are no specific systems costs imposed by the rule and reporting costs are minimal (see discussion on the Paperwork Reduction Act under section VI).

Accordingly, for the reasons set forth above, the FAR Council has made a preliminary determination that it is in the best interest of the government to apply section 1331 to commercial item acquisitions.

C. Applicability to Contracts for the Acquisition of COTS Items

41 U.S.C. 1907 governs the applicability of laws to the acquisition of COTS items. Section 1907 generally limits the applicability of new laws when agencies are acquiring COTS items, but provides that such acquisitions will not be exempt from a provision of law if—

- The law contains criminal or civil penalties;
- The law specifically refers to 41 U.S.C. 1907 and states that the law applies to the acquisition of COTS items;
- The law concerns authorities or responsibilities under the Small Business Act or bid procedures; or
- The Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt the acquisition of COTS items from the provision of law.

Section 1331 amends section 15 of the Small Business Act (15 U.S.C. 644) to address the use of partial set-asides, order set-asides, and reserves under multiple-award contracts. For this reason, the rule applies to acquisitions of COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

These changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to provide uniform guidance consistent with SBA’s final rule at 78 FR 61114, dated October 2, 2013, which implements section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)). Specifically, this rule proposes to provide regulatory guidance by which Federal agencies may—

- (1) Set aside part or parts of multiple-award contracts for small business;
- (2) Reserve one or more awards when conducting multiple-award procurements using full and open competition; and
- (3) Set aside orders under multiple-award contracts, notwithstanding the fair opportunity requirements.

This rule may have a positive economic impact on any small business entity that wishes to participate in the Federal procurement arena. By providing clarification and additional guidance on the use of the Section 1331 authorities, small businesses are expected to have greater access to multiple-award contracts, including orders issued against such contracts. Analysis of the System for Award Management (SAM) database indicates there are over 304,980 small business registrants that can potentially benefit from this rule.

This rule does not impose any new reporting, recordkeeping or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD,

GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2014–002), in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat Division has submitted a request for approval to revise existing information collection requirements, in connection with FAR Case 2014–002, Set-Asides under Multiple-Award Contracts, to the Office of Management and Budget.

Based on the proposed revisions to the FAR, an upward adjustment is being made to the number of respondents, responses per respondent, total annual responses, total hours, and the total cost. As a result, the estimated annual reporting burden is being adjusted upward from the estimate in the notice regarding the extension of OMB Clearance 9000–0163, published in the **Federal Register** at 80 FR 25293, on May 4, 2015.

The annual reporting burden is estimated as follows:

(1) Rerepresentation on long-term contracts, and other contracts as a result of acquisitions, mergers, and novations:

Respondents: 1,700.

Responses per respondent: 1.

Total annual responses: 1,700.

Preparation hours per response: .5.

Total response burden hours: 850.

Cost per hour: \$31.

Total annual burden: \$26,350.

(2) Adjustment to OMB Clearance 9000–0163 for rerepresentation for individual task or delivery orders under multiple-award contracts:

Respondents: 530.

Responses per respondent: 3.

Total annual responses: 1,590.

Preparation hours per response: .5.

Total response burden hours: 795.

Cost per hour: \$31.

Total annual burden: \$24,645.

Total combined annual burden:

Burden hours: 1,645.

Total Cost: \$50,995.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, no later than February 6, 2017 to: FAR Desk

Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, or clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statements from the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405. Please cite OMB Control Number 9000–0163, Small Business Size Representation, in all correspondence.

List of Subjects in 48 CFR Parts 2, 4, 7, 8, 9, 10, 13, 15, 16, 19, 42, and 52

Government procurement.

Dated: November 21, 2016.

William F. Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 2, 4, 7, 8, 9, 10, 13, 15, 16, 19, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 7, 8, 9, 10, 13, 15, 16, 19, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. In section 2.101 amend paragraph (b)(2) by adding to the definition “HUBZone contract” paragraph (4); and adding, in alphabetical order, the definition “HUBZone order” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

HUBZone contract * * *

(4) Awards based on a reserve for HUBZone small business concerns in a

solicitation for a multiple-award contract.

HUBZone order means an order set aside for a *HUBZone small business concern* under a multiple-award contract, which had been awarded under full and open competition.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

■ 3. Amend section 4.803 by removing from paragraph (a)(6) “decision” and adding “decision (see 19.506)” in its place.

■ 4. Amend section 4.1202 by revising the introductory text of paragraph (a) and paragraph (a)(12) to read as follows:

4.1202 Solicitation provision and contract clause.

(a) Except for commercial item solicitations issued under FAR part 12, insert in solicitations the provision at 52.204–8, Annual Representations and Certifications. The contracting officer shall check the applicable provisions at 52.204–8(c)(2). Use the provision with its Alternate I in solicitations that will result in a multiple-award contract with more than one North American Industry Classification System code assigned; this is authorized for solicitations issued after January 1, 2017 (see 19.102(b)). When the provision at 52.204–7, System for Award Management, is included in the solicitation, do not include the following representations and certifications:

* * *

(12) 52.219–1, Small Business Program Representation (Basic, Alternates I, and II).

PART 7—ACQUISITION PLANNING

■ 5. Amend section 7.104 by revising the first sentence of paragraph (d)(1) to read as follows:

7.104 General procedures.

* * * * *

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is set-aside, in total or in part, for small business under part 19. * * *

■ 6. Amend section 7.105 by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans

* * * * *

(b) *Plan of action.* (1) *Sources.* Indicate the prospective sources of

supplies or services that can meet the need. Consider required sources of supplies or services (see Part 8) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <https://www.contractdirectory.gov/contractdirectory/>. Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19). Also, include consideration of the impact of any bundling that might affect small business participation in the acquisition (see 7.107) (15 U.S.C. 644(e)). When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling. Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 7. Amend section 8.405–5 by removing from paragraph (b) “against” and adding “under” in its place and revising the last sentence to read as follows:

8.405–5 Small business.

* * * * *

(b) * * * Ordering activities should rely on the small business representations made by schedule contractors at the contract level (but see section 19.301–2(b)(4) concerning representation for an order).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

■ 8. Amend section 9.104–3 by revising paragraph (d)(2) to read as follows:

9.104–3 Application of standards.

* * * * *

(d) * * *
(2) A small business that is unable to comply with the limitations on subcontracting may be considered nonresponsive (see 52.219–3 Notice of HUBZone Set-Aside or Sole Source Award, 52.219–4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns, 52.219–14 Limitations on Subcontracting, 52.219–27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside, 52.219–29 Notice of Set-Aside for, or Sole Source Award to, Economically

Disadvantaged Women-Owned Small Business Concerns, 52.219–30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program). A small business that has not agreed to comply with the limitations on subcontracting may be considered nonresponsive.

PART 10—MARKET RESEARCH

- 9. Amend section 10.001 by—
- a. Removing from paragraph (a)(3)(v) “and”;
- b. Removing the period from paragraph (a)(3)(vi) and adding a semicolon in its place;
- c. Redesignating paragraph (a)(3)(vii) as paragraph (a)(3)(viii);
- d. Adding paragraph (a)(3)(vii); and
- e. Removing from newly designated paragraph (a)(3)(viii) “Subpart 39.2” and adding “subpart 39.2” in its place.

The addition to read as follows:

10.001 Policy.

(a) * * *

(3) * * *

(vii) Determine whether the acquisition should utilize any of the small business programs in accordance with part 19; and

* * * * *

■ 10. Amend section 10.002 by revising paragraph (b)(1)(vii); and adding paragraph (b)(2)(ix).

The addition and revision to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(1) * * *

(vii) Whether the Government’s needs can be met by small business concerns that will likely submit a competitive offer at fair market prices (see part 19).

(2) * * *

(ix) Reviewing databases such as the System for Award Management (SAM) and the SBA’s Dynamic Small Business Search (DSBS).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 11. Amend section 13.003 by revising paragraph (b)(1) to read as follows:

13.003 Policy.

* * * * *

(b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding \$3,500 (\$20,000 for acquisitions as described in 13.201(g)(1)) but not exceeding \$150,000 (\$300,000 for acquisitions described in

paragraph (1)(i) of the simplified acquisition threshold definition at 2.101) shall be set aside for small business concerns (see 19.000, 19.203, and subpart 19.5).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

15.101–3 [Added]

■ 12. Add section 15.101–3 to read as follows:

15.101–3 Tiered evaluation of small business offers.

An agency cannot create a tiered (or “cascading”) evaluation of offers, as described in 13 CFR 125.2, for multiple-award contracts unless an agency has statutory authority.

PART 16—TYPES OF CONTRACTS

■ 13. Amend section 16.500 by adding paragraph (e) to read as follows:

16.500 Scope of subpart.

* * * * *

(e) See subpart 19.5 for procedures to set aside part or parts of multiple-award contracts for small business; to reserve one or more awards for small business on multiple-award contracts; and to set aside orders for small businesses under multiple-award contracts.

■ 14. Amend section 16.505 by

■ a. Adding paragraph (a)(10)(iii);

■ b. Removing from the end of the introductory text of paragraph (b) “contracts—” and adding “contracts.” in its place;

■ c. Revising paragraph (b)(4);

■ d. Revising the heading of paragraph (b)(6); and

■ e. Adding paragraph (b)(9).

The addition and revisions to read as follows:

16.505 Ordering.

(a) * * *

(10) * * *

(iii) For protests of small business size status for set-aside orders, see 19.302.

* * * * *

(b) * * *

(4) For additional requirements for cost-reimbursement orders, see 16.301–3.

* * * * *

(6) *Postaward notices and debriefing of awardees for orders exceeding \$5 million.* * * *

* * * * *

(9) *Small business.* The contracting officer should rely on the small business representations at the contract level (but see section 19.301–2(b)(4) for order rerepresentations).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

- 15. Amend section 19.000 by—
- a. Removing from paragraph (a)(3) “aside” and adding “aside, in total or in part,” in its place;
- b. Removing from paragraph (a)(8) “and”;
- c. Removing from paragraph (a)(9) “Program.” and adding “Program; and” in its place; and
- d. Adding paragraph (a)(10).
The addition to read as follows:

19.000 Scope of part.

(a) * * *

(10) The use of reserves.

* * * * *

- 16. Amend section 19.001 by removing the definition “Nonmanufacturer rule” and adding, in alphabetical order, the definition “Nonmanufacturer” to read as follows:

19.001 Definitions.

* * * * *

Nonmanufacturer means a concern that furnishes a product it did not manufacture or produce (see 13 CFR 121.406).

- 17. Revise section 19.102 to read as follows:

19.102 Small business size standards and North American Industry Classification System codes.

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

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

(b) *Determining the appropriate NAICS codes for the solicitation.* (1) The contracting officer shall determine the appropriate NAICS code by classifying the product or service being acquired in the one industry which best describes the principal purpose of the supply or service being acquired. Primary consideration is given to the industry descriptions in the U.S. NAICS Manual, the product or service descriptions in the solicitation, the relative value and

importance of the components of the requirement making up the end item being procured, and the function of the goods or services being purchased. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value.

(2)(i) For solicitations issued on or before January 31, 2017 that will result in multiple-award contracts, the contracting officer shall assign a NAICS code in accordance with paragraph (b)(1) of this section.

(ii) For solicitations issued after January 31, 2017 that will result in multiple-award contracts, the contracting officer shall—

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

(B) Divide the acquisition into distinct portions or categories (e.g., Line Item Numbers (LINs), Special Item Numbers (SINs), Sectors, Functional Areas (FAs), or equivalent) and assign each portion or category a single NAICS code and size standard which best describes the principal purpose of the supplies or services to be acquired under that distinct portion or category.

(3)(i) When placing orders under multiple-award contracts whose solicitations were issued on or before January 31, 2017, the contracting officer shall assign the order the same NAICS code and corresponding size standard designated in the contract.

(ii) When placing orders under multiple-award contracts whose solicitations were issued after January 31, 2017, the contracting officer shall—

(A) Assign the order the same NAICS code and corresponding size standard designated in the contract when conditions in (b)(2)(ii)(A) are met; or

(B) Assign the order the NAICS code and corresponding size standard designated for the distinct portion or category designated in the contract when conditions in (b)(2)(ii)(B) are met. If an order covers multiple portions or categories, select the NAICS code and corresponding size standard which best represents the principal purpose of the order.

(4) The contracting officer’s designation is final. Appeal procedures can be found in 19.103.

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

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

(2) The contracting officer may amend the solicitation and use the new size

standard if SBA amends the size standard and it becomes effective before the due date for receipt of initial offers.

- 18. Add section 19.103 to read as follows:

19.103 Appealing the contracting officer’s North American Industry Classification System code and size standard determination.

(a) The contracting officer’s determination is final unless appealed as follows:

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

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

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

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

(3) Contracting officers shall advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see 5.102(a)(1)). Such notices shall include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

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

(5)(i) The appeal petition must be in writing and must be addressed to the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street SW., Washington, DC 20416.

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, email address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(6) The appellant must serve the appeal petition upon—

(i) The contracting officer who assigned the NAICS code to the acquisition; and

(ii) SBA’s Office of General Counsel, Associate General Counsel for Procurement Law, 409 3rd Street SW., Washington, DC 20416, facsimile 202–205–6873, or email at *OPLService@sba.gov*.

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

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

(b) SBA’s regulations concerning appeals of NAICS code designations are found at 13 CFR 121.1101 to 121.1103 and 13 CFR part 134.

■ 19. Amend section 19.201 by—

■ a. In paragraph (c), revising the second sentence of the introductory text of the paragraph;

■ b. Removing from paragraph (c)(1) “Director of” wherever it appears and adding “Director of the Office of” in its place;

■ c. Revising paragraph (c)(3) and the introductory text of (c)(5); and

■ d. Revising paragraph (d).

The revised text reads as follows:

19.201 General policy.

* * * * *

(c) * * * For the Department of Defense, in accordance with 10 U.S.C. 144 note, the Office of Small and Disadvantaged Business Utilization has been redesignated as the Office of Small Business Programs. * * *

(3) Be responsible to and report directly to the agency head or the deputy to the agency head (except that for the Department of Defense, the Director of the Office of Small Business Programs reports to the Secretary or the Secretary’s designee);

* * * * *

(5) Work with the SBA procurement center representative (PCR) (or, if a PCR is not assigned, see 19.402(a)) to—

* * * * *

(d) Small business specialists shall be appointed and act in accordance with agency regulations.

(1) The contracting activity shall coordinate with the small business specialist as early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation when the acquisition meets the dollar thresholds set forth at 7.104(d)(2).

(2) The small business specialist shall notify the agency’s Director of the Office of Small and Disadvantaged Utilization, and for the Department of Defense, the Director of the Office of Small Business Programs, when the criteria relating to substantial bundling at 7.104(d)(2) are met.

(3) The small business specialist shall coordinate with the contracting activity and the SBA PCR on all determinations and findings required by 7.107 for consolidation or bundling of contract requirements.

■ 20. Revise section 19.202 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 the Office of Small and Disadvantaged Business Utilization, or for the Department of Defense, the Director of the Office of Small Business Programs, or the Director’s designee, as to whether a particular acquisition should be awarded under subpart 19.5, 19.8, 19.13, 19.14, or 19.15. Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director’s designee for the purpose of making these recommendations. The contracting officer shall document the contract file whenever the Director’s

recommendations are not accepted, in accordance with 19.506.

■ 21. Amend section 19.202–1 by revising the introductory text of paragraph (e)(1) and removing from paragraph (e)(4) “19.505” and adding “19.502–8” in its place. The revision reads as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) Provide a copy of the proposed acquisition package and other reasonably obtainable information related to the acquisition, to the SBA PCR (or, if a PCR is not assigned, see 19.402(a)) at least 30 days prior to the issuance of the solicitation if—

* * * * *

■ 22. Amend section 19.202–2 by removing from the introductory paragraph “must” and adding “shall” in its place and revising paragraph (a) to read as follows:

19.202–2 Locating small business sources.

* * * * *

(a) Before issuing solicitations, make every reasonable effort to find additional small business concerns (see 10.002(b)(2)). This effort should include contacting the agency small business specialist and SBA PCR (or, if a PCR is not assigned, see 19.402(a))

* * * * *

19.202–4 [Amended]

■ 23. Amend section 19.202–4 by removing from the introductory paragraph “must” and adding “shall” in its place; and removing from paragraph (c) “bid sets and specifications” and adding “solicitations” in its place.

■ 24. Amend section 19.202–5 by removing from the introductory paragraph “must” and adding “shall” in its place and revising paragraph (c)(1) to read as follows:

19.202–5 Data collection and reporting requirements.

* * * * *

(c) * * *

(1) Require a contractor that represented itself as any of the small business concerns identified in 19.000(a)(3) prior to award of the contract to rerepresent its size and socioeconomic status (*i.e.*, 8(a), small disadvantaged business, HUBZone small business, service-disabled veteran-owned small business, or women-owned small business status); and

* * * * *

19.202–6 [Amended]

■ 25. Amend section 19.202–6 by removing from paragraph (a)(1) “set-asides” and adding “set-asides, and reserves”.

19.203 [Amended]

■ 26. Amend section 19.203 by removing from paragraph (b) “exclusively reserve” and adding “set aside” in its place.

■ 27. Amend section 19.301–1 by—

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) through (d) as paragraphs (e) through (g); and

■ c. Adding new paragraphs (b) through (d).

The revision and additions read as follows:

19.301–1 Representation by the offeror.

(a) To be eligible for award as a small business concern identified in 19.000(a)(3), an offeror is required to represent in good faith—

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

(ii) For a multiple-award contract where there is more than one NAICS code assigned, that it meets the small business size standard set forth for each distinct portion or category (*e.g.* Line Item Numbers (LINs), Special Item Numbers (SINs), Sectors, Functional Areas (FAs), or the equivalent) for which it submits an offer. If the small business concern submits an offer for the entire multiple-award contract, it must meet the size standard for each distinct portion or category (*e.g.* LIN, SIN, Sector, FA, or equivalent); and

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

(b) An offeror is required to represent its size and socioeconomic status in writing to the contracting officer at the time of initial offer, including offers for Basic Ordering Agreements, and Blanket Purchase Agreements (BPAs), except for BPAs issued under a multiple award schedule contract pursuant to subpart 8.4.

(c) To be eligible for an award under the HUBZone Program (see subpart 19.13), a HUBZone small business concern must represent its size and socioeconomic status at the time of initial offer and at the time of contract award.

(d) *Multiple-award contract representations.*

(1) A business that represents as a small business concern at the time of its

initial offer for the contract is considered a small business concern for each order issued under the contract (but see 19.301–2 for rerepresentations).

(2) A business that represents as a small business concern at the time of its initial offer for a distinct portion or category as set forth in paragraph (a)(2) is considered a small business concern for each order issued under that distinct portion or category (but see 19.301–2 for rerepresentations).

* * * * *

■ 28. Amend section 19.301–2 by—

■ a. Revising the introductory text of paragraph (b);

■ b. Removing the period from the end of paragraph (b)(1) and adding a semicolon in its place;

■ c. Revising paragraph (b)(2);

■ d. Removing from paragraph (b)(3)(ii) “thereafter.” and adding “thereafter; or” in its place;

■ e. Adding paragraph (b)(4); and

■ f. Revising paragraphs (c) and (d).

The revisions and addition read as follows:

19.301–2 Rerepresentation by a contractor that represented itself as a small business concern.

* * * * *

(b) A contractor that represented itself as any of the small business concerns identified in 19.000(a)(3) before contract award is required to rerepresent its size and socioeconomic status for the NAICS code in the contract—

* * * * *

(2) Within 30 days after a merger or acquisition (whether the contractor acquires or is acquired by another company) of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at FAR 52.219–28, Post-Award Small Business Program Rerepresentation, if the merger or acquisition occurred prior to inclusion of this clause in the contract;

* * * * *

(4) If the contracting officer requires contractors to rerepresent their size and socioeconomic status for an order issued under a multiple-award contract.

(c) A contractor is required to rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract. For multiple-award contracts where there is more than one NAICS code assigned, the contractor is required to rerepresent whether it meets the small business size standard set forth for each distinct category or portion (*e.g.*, LINs, SINS, Sectors, FAs, or the equivalent) for

which the contractor had previously represented.

(d)(1) *Contract rerepresentation.*

When a contractor rerepresents for a contract that it no longer qualifies as a small business concern identified in 19.000(a)(3) in accordance with FAR 52.219–28, the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under BPAs on that contract in its small business prime contracting goal achievements. When a contractor’s rerepresentation for a contract qualifies it as a different small business concern identified in 19.000(a)(3) than what it represented for award, the agency may include the value of options exercised, modifications issued, orders issued, or purchases made under BPAs on that contract in its small business prime contracting goal achievements, consistent with the rerepresentation. Agencies should issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation.

(2) *Rerepresentation for an order.*

When a contractor rerepresents for an order that it no longer qualifies as a small business concern identified in 19.000(a)(3), the agency cannot include the value of the order in its small business prime contracting goal achievements. When a contractor’s rerepresentation for an order qualifies it as a different small business concern identified in 19.000(a)(3) than what it represented for contract award, the agency can include the value of the order in its small business prime contracting goal achievement, consistent with the rerepresentation. A rerepresentation for an order does not change the size or socioeconomic status representation for the contract.

* * * * *

■ 29. Amend section 19.302 by revising paragraphs (a), (b), and (d)(1)(ii) to read as follows:

19.302 Protesting a small business representation or rerepresentation.

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

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

(b) Any time after offers are received by the contracting officer, or in the case of bids, opened, the contracting officer

may question the small business representation of any offeror in a specific offer by filing a contracting officer's protest (see paragraph (c) of this section).

* * * * *

(d) * * *

(1) * * *

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, mail, facsimile, email, express or overnight delivery service or letter postmarked within the 5-day period.

* * * * *

19.303 [Reserved]

■ 30. Remove and reserve section 19.303.

■ 31. Amend section 19.307 by revising paragraph (b)(1) to read as follows:

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

* * * * *

(b)(1) For sole source acquisitions, the contracting officer or SBA may protest the apparently successful offeror's service-disabled veteran-owned small business status. For all other acquisitions, any interested party (see 13 CFR 125.8(b)) may protest the apparently successful offeror's service-disabled veteran-owned small business status.

* * * * *

■ 32. Amend section 19.309 by adding paragraph (a)(3) to read as follows:

19.309 **Solicitation provisions and contract clauses.**

(a)(1) * * *

(3) Use the provision with its Alternate II in solicitations that will result in a multiple-award contract with more than one NAICS code assigned. This is authorized for solicitations issued after January 31, 2017 (see 19.102(b)).

■ 33. Amend section 19.401 by revising paragraph (b) to read as follows:

19.401 **General.**

* * * * *

(b) The Director of the Office of Small and Disadvantaged Business Utilization serves as the agency focal point for interfacing with SBA. The Director of the Office of Small Business Programs is the agency focal point for the Department of Defense.

■ 34. Amend section 19.402 by revising paragraphs (a)(1), (a)(2), (b), and the introductory text to paragraph (c) to read as follows:

19.402 **Small Business Administration procurement center representatives.**

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

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

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

(c) The duties assigned by SBA to its PCR are set forth at 13 CFR 125.2(b) and include but are not limited to the following:

* * * * *

19.403 [Amended]

■ 35. Amend section 19.403 by removing from paragraph (c)(8) "at 19.505" and adding "at 19.502-8" in its place.

■ 36. Revise the heading of subpart 19.5 to read as follows:

Subpart 19.5 Small Business Total Set-Asides, Partial Set-Asides, and Reserves

■ 37. Revise section 19.501 to read as follows:

19.501 **General.**

(a)(1) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A "set-aside for small business" is the limiting of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to any of the small business concerns identified at 19.000(a)(3). A small business set-aside of a single acquisition or a class of acquisitions may be total or partial.

(2) The purpose of a small business reserve is to award one or more

contracts to any of the small business concerns identified at 19.000(a)(3), under a full and open competition that will result in a multiple-award contract. A small business reserve shall not be used when the acquisition can be set aside, in total or in part.

(b) The contracting officer makes the determination to make a small business set-aside, in total or in part, or a reserve. The Small Business Administration (SBA) PCR (or, if a PCR is not assigned, see 19.402(a)) may make a recommendation to the contracting officer.

(c) The contracting officer shall review acquisitions to determine if they can be set aside, in total or in part, or reserved, for small business, giving consideration to the recommendations of agency personnel in the Office of Small and Disadvantaged Business Utilization, or for the Department of Defense, in the Office of Small Business Programs. Agencies may establish threshold levels for this review depending upon their needs.

(d) At the request of an SBA PCR, (or, if a PCR is not assigned, see 19.402(a)) the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides, in total or in part, or reserves, rather than joint determinations by an SBA PCR and a contracting officer.

(f) All solicitations involving set-asides, in total or in part, or reserves, shall specify the NAICS code(s) and corresponding size standard(s) (see 19.102).

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

(h) The performance of work requirements (*i.e.*, limitations on subcontracting and the nonmanufacturer rule) apply to small business set-asides, in total or in part, sole source awards made pursuant to subparts 19.8, 19.13, 19.14, and 19.15, and orders that are set aside (see 19.505).

■ 38. Amend section 19.502-1 by removing from paragraph (a)(2) "industry category" and adding "industry" in its place; and revising paragraph (b) to read as follows:

19.502-1 Requirements for setting aside acquisitions.

* * * * *

(b) This requirement does not apply to purchases of \$3,500 or less (\$20,000 or less for acquisitions as described in 13.201(g)(1)), or purchases from required sources under part 8 (e.g., Committee for Purchase From People Who are Blind or Severely Disabled).

■ 39. Amend section 19.502-2 by revising paragraphs (a), (b)(1), and (b)(2); and removing paragraph (c) to read as follows:

19.502-2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(b). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,500 (\$20,000 for acquisitions as described in 13.201(g)(1)), but not over \$150,000 (\$300,000 for acquisitions described in paragraph (1)(i) of the Simplified Acquisition Threshold definition at 2.101), shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of fair market prices, quality, and delivery. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business set-aside does not preclude the award of a contract as described in 19.203.

(b) * * *

(1) Offers will be obtained from at least two responsible small business concerns; and

(2) Award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (see 19.502-3 for partial set-asides). Although past acquisition history and market research of an item or similar items are always important, these are not the only factors 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.

■ 40. Revise section 19.502-3 to read as follows:

19.502-3 Partial set-asides of contracts other than multiple-award contracts.

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

(1) Market research indicates that a total set-aside is not appropriate (see 19.502-2);

(2) The requirement can be divided into distinct portions or categories (e.g., Line Item Numbers (LINs), Special Item Numbers (SINs), Sectors, Functional Areas (FAs), or equivalent);

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

(4) Two or more responsible small business concerns are expected to submit an offer on the set-aside portion or portions of the acquisition at a fair market price;

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

(6) The solicitation will result in a contract other than a multiple-award contract (see 2.101 for definition of multiple-award contract).

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

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

(d) Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of partial set-asides. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see subpart 19.3).

■ 41. Revise section 19.502-4 to read as follows:

19.502-4 Partial set-asides of multiple-award contracts.

(a) In accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r)(1)), the contracting officer may set aside a portion or portions of a multiple-award contract, except for construction, for any of the small business concerns identified at 19.000(a)(3) when—

(1) Market research indicates that a total set-aside is not appropriate (see 19.502-2);

(2) The requirement can be divided into distinct portions or categories (e.g.,

Line Item Numbers (LINs), Special Item Numbers (SINs), Sectors, Functional Areas (FAs), or equivalent);

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

(4) Two or more responsible small business concerns are expected to submit an offer on the set-aside portion or portions of the acquisition at a fair market price; and

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

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

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

(d) Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of partial set-asides. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see subpart 19.3).

19.502-5 [Removed]

■ 42. Remove section 19.502-5.

19.502-6 [Redesignated as 19.502-5]

■ 43. Redesignate section 19.502-6 as section 19.502-5 and revise the heading to read as follows:

19.502-5 Insufficient reasons for not setting aside an acquisition.**19.503 thru 19.507 [Redesignated as 19.502-6 thru 19.502-10]**

■ 44. Redesignate sections 19.503 through 19.507 as sections 19.502-6 through 19.502-10.

■ 45. Amend newly designated section 19.502-8 by—

■ a. Revising paragraph (a); and

■ b. Removing from paragraph (b) “procurement center representative” wherever it appears and adding “PCR” in its place.

The revision to read as follows:

19.502-8 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA, written notice shall be furnished to the appropriate SBA representative within 5 working days of the contracting officer's receipt of the recommendation.

■ 46. Amend newly designated section 19.502-9 by revising paragraph (a); and removing from paragraph (b) “SBA representative” and “procurement

center representative” and adding “SBA PCR” and “PCR” in their places, respectively to read as follows:

19.502–9 Withdrawing or modifying small business set-asides.

(a) If, before award of a contract involving a total or partial small business set-aside, the contracting officer considers that award would be detrimental to the public interest (*e.g.*, payment of more than a fair market price), the contracting officer may withdraw the small business set-aside, whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual small business set-aside in total or in part, by giving written notice to the agency small business specialist and the SBA PCR (or, if a PCR is not assigned, see 19.402(a)) stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class small business set-aside to withdraw one or more individual acquisitions.

■ 47. Add new section 19.503 to read as follows:

19.503 Reserves.

(a) In accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r)(3)) and 13 CFR 125.2(e)(4), contracting officers may, at their discretion when conducting multiple-award procurements using full and open competition, reserve one or more contract awards for any of the small business concerns identified in 19.000(a)(3), when market research indicates—

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

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

(i) The contracting officer is unable to divide the requirement into distinct portions or categories (*e.g.* Line Item Numbers (LINs), Special Item Numbers (SINs), Functional Areas (FAs), or other equivalent); or

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

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

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

(2) In the case of a solicitation of a bundled requirement that will result in a multiple-award contract, an award to

one or more small businesses with a Small Business Teaming Arrangement.

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

(d) The limitation on subcontracting and the nonmanufacturer rule do not apply to reserves at the contract level, but shall apply to orders that are set aside (see 19.505).

■ 48. Add new section 19.504 to read as follows:

19.504 Setting aside orders under multiple-award contracts.

(a) In accordance with section 1331 of Public Law 111–240 (15 U.S.C. 644(r)(2)), contracting officers may, at their discretion, set aside orders placed under multiple-award contracts for any of the small business concerns identified in 19.000(a)(3).

(b) *Orders under partial set-aside contracts.*

(1) Only small business concerns awarded contracts for the portion(s) or category(s) that were set aside under the solicitation for the multiple-award contract may compete for orders issued under those portion(s) or category(s).

(2) Small business awardees may compete against other-than-small business awardees for an order issued under the portion of the multiple-award contract that was not set aside, if the small business received a contract award for the non-set-aside portion.

(c) *Orders under reserves.*

(1) The contracting officer may set aside orders for any of the small business concerns identified in 19.000(a)(3) when there are two or more contract awards for that type of small business concern; or

(2) The contracting officer may issue orders directly to one small business concern for work that it can perform when there is only one contract award to any one type of small business concern identified in 19.000(a)(3).

(3) Small business awardees may compete against other-than-small business awardees for an order that is not set aside if the small business received a contract award for the supplies or services being ordered.

(d) *Orders under Full and Open contracts.*

(1) The contracting officer shall state in the solicitation and resulting contract whether order set-asides will be discretionary or mandatory when the conditions in 19.502–2 are met at the time of order set-aside, and the specific program eligibility requirements, as applicable, are also then met.

(2) *Below \$150,000.* When setting aside an order below \$150,000, the contracting officer may set aside for any

of the small businesses identified in 19.000(a)(3).

(3) *Above \$150,000.* When setting aside an order above \$150,000, the contracting officer shall first consider setting aside the order for the small business socioeconomic programs (*i.e.*, 8(a), HUBZone, service-disabled veteran-owned small business (SDVOSB), and Women-Owned Small Business (WOSB)) before considering a small business set-aside.

(4) The contracting officer shall comply with the specific program eligibility requirements identified in this part in addition to the ordering procedures for a multiple-award contract. For orders placed under the Federal Supply Schedules Program, see 8.405–5. For orders placed under all other multiple-award contracts, see 16.505.

■ 49. Add new section 19.505 to read as follows:

19.505 Performance of work requirements.

(a) *Limitation on subcontracting.* To be awarded a contract or order under a set-aside, the small business concern is required to perform:

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

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

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

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

(b) *Compliance period.* A small business contractor is required to comply with the limitation on subcontracting—

(1) For a contract that has been set aside, by the end of the base term and then by the end of each subsequent option period. However, the contracting officer may instead require the contractor to comply with the limitation on subcontracting by the end of the performance period for each order issued under the contract; and

(2) For an order set aside under a contract as described in 8.405–5 and 16.505(b)(2)(i)(F), by the end of the performance period for the order.

(c) *Nonmanufacturer Rule.* (1) To be awarded a set-aside contract or order for supplies as a nonmanufacturer, a contractor is required—

(i) To provide the end item of a small business manufacturer, that has been manufactured or produced in the United States or its outlying areas (but see 19.1308(e)(1)(i) for HUBZone contracts and HUBZone orders);

(ii) To not exceed 500 employees;

(iii) To be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iv) To take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice.

(2) In addition to the requirements set forth in (c)(1) of this section, when the end item being acquired is a kit of supplies or other goods, 50 percent of the total value of the components of the kit shall be manufactured in the United States or its outlying areas by small business concerns. Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such items shall be excluded from the 50 percent calculation. See 13 CFR 121.406(c) for further information regarding nonmanufacturer kit assemblers.

(3) For size determination purposes, there can be only one manufacturer of the end product being acquired. For the purposes of the nonmanufacturer rule, the manufacturer of the end product being acquired is the concern that transforms raw materials and/or miscellaneous parts or components into the end product. Firms which only minimally alter the item being procured do not qualify as manufacturers of the end item, such as firms that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer, where those identical modifications can be performed by and are available from the manufacturer of the existing end item. See 13 CFR 121.406 for further information regarding manufacturers.

(4) *Waiver of nonmanufacturer rule.*

(i) The SBA may grant an individual or a class waiver so that a nonmanufacturer does not have to furnish the product of a small business (but see 19.1308(e)(2)).

(A) *Class waiver.* SBA may waive the performance of work requirement for nonmanufacturers when SBA has determined that there are no small business manufacturers or processors in the Federal market for a particular class of products. This type of waiver is known as a class waiver and would apply to an acquisition for a specific product (or a product in a class of products). Contracting officers and other interested parties may request that the SBA issue a waiver of the

nonmanufacturer rule, for a particular class of products.

(B) *Individual waiver.* The contracting officer may also request a waiver for an individual acquisition because no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation. The type of waiver is known as an individual waiver and would apply only to a specific acquisition.

(ii) Requests for waivers shall be sent via email to nmrwaivers@sba.gov or by mail to the—

Director for Government Contracting
United States Small Business
Administration
Mail Code 6700
409 Third Street SW.
Washington, DC 20416.

(iii) For the most current listing of class waivers, contact the SBA Office of Government Contracting or go to <http://www.sba.gov/content/class-waivers>.

(5) *Exception to the nonmanufacturer rule.* The SBA provides for an exception to the nonmanufacturer rule when—

(i) The procurement of supplies or a manufactured end product—

(A) Is processed under simplified acquisition procedures (see part 13); or

(B) Is for an order set aside for any of the small business concerns identified in 19.000(a)(3), placed under a full and openly competed multiple-award contract;

(ii) The cost is not anticipated to exceed \$25,000; and

(iii) The offeror supplies an end product that is manufactured or produced in the United States.

(d) The contracting officer shall document a small business contractor's compliance with the limitation on subcontracting as part of its performance evaluation in accordance with the procedures set forth in 42.1502.

■ 50. Add section 19.506 to read as follows:

19.506 Documentation requirements

(a)(1) The contracting officer shall document the rationale when a contract is not set aside for small business in accordance with 19.502–2.

(2) The contracting officer shall document the rationale when a multiple-award contract is not partially set aside, not reserved, and does not allow for setting aside of orders, when these authorities could have been used.

(b) If applicable, the documentation shall include the rationale for not accepting the recommendations made by the agency Director of Small and Disadvantaged Business Utilization, or,

for the Department of Defense, the Director of the Office of Small Business Programs, or the Director's designee, as to whether a particular acquisition should be awarded under subparts 19.5, 19.8, 19.13, 19.14, or 19.15.

(c) Documentation is not required if a contract award is anticipated to a small business under subparts 19.5, 19.8, 19.13, 19.14, or 19.15.

19.508 [Redesignated as 19.507]

■ 51. Redesignate section 19.508 as section 19.507 and amend newly designated section 19.507 by revising paragraphs (c) through (f); and adding new paragraphs (g) and (h) to read as follows:

19.507 Solicitation provisions and contract clauses.

* * * * *

(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. This includes multiple-award contracts when orders may be set aside for any of the small business concerns identified in 19.000(a)(3), as described in 8.405–5 and 16.505(b)(2)(i)(F). Use the clause at 52.219–6 with its Alternate I when including FPI in the competition in accordance with 19.502–7.

(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. This includes part or parts of multiple-award contracts, including those described in 38.101. Use the clause at 52.219–7 with its Alternate I when including FPI in the competition in accordance with 19.502–7.

(e) The contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business and the contract amount is expected to exceed \$150,000. This includes multiple-award contracts when orders may be set aside for small business concerns, as described in 8.405–5 and 16.505(b)(2)(i)(F). For contracts that are set aside, the contracting officer shall indicate in paragraph (d) of the clause whether compliance with the limitations on subcontracting is required at the contract or order level.

(f)(1) The contracting officer shall insert the clause at 52.219–13, Notice of Set-Aside of Orders, in all solicitations for multiple-award contracts under which orders may be set aside for any

of the small business concerns identified in 19.000(a)(3), and all contracts awarded from such solicitations.

(2) The contracting officer shall insert the clause at 52.219-13 with its Alternate I in all full and open solicitations and contracts for multiple-award contracts without reserves, under which orders will be set aside for any of the small business concerns identified in 19.000(a)(3) if the conditions in 19.502-2 are met at the time of order set-aside, and the specific program eligibility requirements, as applicable, are also then met.

(g) The contracting officer shall insert the clause at 52.219-XX Notice of Small Business Reserve, in solicitations and contracts involving multiple-award contracts that have reserves.

(h)(1) The contracting officer shall insert the clause at 52.219-YY, Nonmanufacturer Rule, in solicitations and contracts when the item being acquired has been assigned a manufacturing or supply NAICS code, and any portion of the requirement is set-aside for any of the small business concerns identified in 19.000(a)(3) (with the exception of HUBZone small business concerns) including multiple-award contracts that provide for the set-aside of orders to small business concerns, or is awarded on a sole-source basis in accordance with subparts 19.8 and 19.14. The clause shall not be used when the Small Business Administration has determined that there are no small business manufacturers of the product or end items and has waived the nonmanufacturer rule (see 19.505(c)(4)).

(2) The clause at 52.219-YY with its Alternate I shall be used in solicitations and contracts that have been set-aside or awarded on a sole-source basis to HUBZone small business concerns, including multiple-award contracts that provide for the set-aside of orders as described in 8.405-5 and 16.505(b)(2)(i)(F).

■ 52. Amend section 19.601 by adding paragraph (f) to read as follows:

19.601 General.

* * * * *

(f) For the purpose of receiving a COC on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

19.602-3 [Amended]

■ 53. Amend section 19.602-3 by removing from paragraph (a)(2) “Director,” and adding “Director of the” in its place.

■ 54. Amend section 19.602-4 by adding a sentence to the end of paragraph (b) to read as follows:

19.602-4 Awarding the contract.

* * * * *

(b) * * * Where SBA issues a COC, the contracting officer may decide not to award to that offeror for reasons unrelated to responsibility.

■ 55. Amend section 19.804-2 by revising paragraph (a) to read as follows:

19.804-2 Agency offering.

(a) After completing its evaluation, the agency shall notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work, including 8(a) contracts that are reserved in accordance with 19.503.

* * * * *

■ 56. Amend section 19.804-6 by revising paragraphs (a) and (b) to read as follows:

19.804-6 Indefinite delivery contracts.

(a) Separate offers and acceptances are not required for individual orders under multiple-award contracts that have been set aside for exclusive competition among 8(a) contractors, and the individual order is to be competed among all 8(a) contract holders. SBA’s acceptance of the original contract is valid for the term of the contract.

(b) *Sole source orders.* The contracting officer may issue an order as a sole source when—

(1) The multiple-award contract was set aside for exclusive competition among 8(a) participants;

(2) The order has an estimated value less than or equal to the dollar thresholds set forth at 19.805-1(a)(2);

(3) The offering and acceptance procedures at 19.804-2 and 19.804-3 are followed.

* * * * *

19.805-2 [Amended]

■ 57. Amend section 19.805-2 by removing from paragraph (b)(2) “under 19.809” and adding “under 19.809-1” in its place.

■ 58. Revise section 19.809 to read as follows:

19.809 Preward considerations.

19.809-1 Preward survey.

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm’s ability to perform, the contracting officer shall refer the matter to SBA for

Certificate of Competency consideration under subpart 19.6.

19.809-2 Performance of work requirements.

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

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

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

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

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

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

(1) For a contract under the 8(a) program, by the end of the base term and then by the end of each subsequent option period. However, the contracting officer may instead require the contractor to comply with the limitation on subcontracting by the end of the performance period for each order issued under the contract; and

(2) For an order set aside under the 8(a) program as described in 8.405-5 and 16.505(b)(2)(i)(F), by the end of the performance period for the order.

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

(1) The 8(a) participant is required to provide the SBA District Director written assurance that the participant will ultimately comply with the requirements of this section prior to contract completion. The contracting officer shall review and concur with the written assurance before submission to the SBA District Director.

(2) The contracting officer does not have the authority to waive the provisions of this section requiring a participant to comply with the

limitation on subcontracting for each period of performance or order, even if the agency has a Partnership Agreement with SBA.

(3) Where the participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the participant.

(d) *Nonmanufacturer Rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

(e) The contracting officer shall document an 8(a) participant's compliance with the limitation on subcontracting as part of its performance evaluation in accordance with the procedures set forth in 42.1502.

19.810 [Amended]

■ 59. Amend section 19.810 by removing from paragraph (b) "for Small" and adding "for the Office of Small" in its place.

■ 60. Amend section 19.811–3 by revising paragraphs (d) and (e) to read as follows:

19.811–3 Contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805. The clause at 52.219–18 with its Alternate I shall be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to 19.804–2.

(e) See 19.507(e) regarding the limitations on subcontracting and 19.507(h) regarding the nonmanufacturer rule to any contract or order resulting from this subpart.

19.1303 [Amended]

■ 61. Amend section 19.1303 by removing paragraph (e).

■ 62. Amend section 19.1307 by—

■ a. Removing from paragraph (a)(1) "or";

■ b. Removing from paragraph (a)(2) "contracts." and adding "contracts); or" in its place; and

■ c. Adding paragraph (a)(3).

The addition to read as follows:

19.1307 Price evaluation preference for HUBZone small business concerns.

(a) * * *

(3) Where the solicitation has been reserved for any of the small business concerns identified in 19.000(a)(3).

* * * * *

■ 63. Revise section 19.1308 to read as follows:

19.1308 Performance of work requirements.

(a) See 13 CFR 125.1 for definitions of terms used in paragraph (b) of this section.

(b) *Limitation on subcontracting.* To be awarded a contract or order that was set aside or awarded on a sole source basis to a HUBZone small business concern, the HUBZone small business concern is required—

(1) For services (except construction), to spend at least 50 percent of the cost of performance incurred for personnel on its own employees or on the employees of other HUBZone small business concerns;

(2) For supplies or products (other than a procurement from a nonmanufacturer of such supplies or products), to spend at least 50 percent of the cost of manufacturing, excluding the cost of materials, on performing the contract in a HUBZone.

(3) For general construction—

(i) To spend at least 15 percent of the cost of performance incurred for personnel on its own employees; and

(ii) To spend at least 50 percent of the cost of performance incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors.

(4) For construction by special trade contractors—

(i) To spend at least 25 percent of the cost of contract performance incurred for personnel on its own employees; and

(ii) To spend at least 50 percent of the cost of the contract incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors.

(c) Before issuing a solicitation for general construction or construction by special trade contractors, the contracting officer shall determine if at least two HUBZone small business concerns can spend at least 50 percent of the cost of contract performance to be incurred for personnel on their own employees or subcontract employees of other HUBZone small business concerns. If the contracting officer is unable to make this determination, he or she may waive the 50 percent requirement; however, the HUBZone small business concern is still required to meet the cost incurred for personnel requirements in paragraphs (b)(3)(i) and (b)(4)(i).

(d) *Compliance period.* A HUBZone small business contractor is required to comply with the limitation on subcontracting—

(1) For a contract that has been set aside or awarded on a sole source basis to a HUBZone small business concern,

by the end of the base term and then by the end of each subsequent option period. However, the contracting officer may instead require the contractor to comply with the limitation on subcontracting by the end of the performance period for each order issued under the contract; and

(2) For an order set aside for HUBZone small business concerns as described in 8.405–5 and 16.505(b)(2)(i)(F), by the end of the performance period for the order.

(e) *Nonmanufacturer rule.* (1) To be awarded a set-aside contract or order for supplies as a nonmanufacturer, a contractor is required—

(i) To provide the end item of a HUBZone small business manufacturer, that has been manufactured or produced in the United States or its outlying areas;

(ii) Not to exceed 500 employees;

(iii) To be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iv) To take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice.

(2) There are no class waivers or waivers to the nonmanufacturer rule for individual solicitations for HUBZone contracts and HUBZone orders.

(3) For HUBZone contracts and HUBZone orders at or below \$25,000 in total value, a HUBZone small business concern may supply the end item of any manufacturer, including a large business, so long as the product acquired is manufactured or produced in the United States.

(f) The contracting officer shall document a HUBZone contractor's compliance with the limitation on subcontracting as part of its performance evaluation in accordance with the procedures set forth in 42.1502.

■ 64. Revise section 19.1309 to read as follows:

19.1309 Contract clauses.

(a)(1) The contracting officer shall insert the clause 52.219–3, Notice of HUBZone Set-Aside or Sole Source Award, in solicitations and contracts for acquisitions that are set aside or awarded on a sole source basis to, HUBZone small business concerns under 19.1305 or 19.1306. This includes multiple-award contracts when orders may be set aside for HUBZone small business concerns as described in 8.405–5 and 16.505(b)(2)(i)(F).

(2) The contracting officer shall use the clause with its Alternate I to waive the 50 percent requirement if the conditions at 19.1308(c) apply.

(b)(1) The contracting officer shall insert the clause at FAR 52.219–4,

Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition.

(2) The contracting officer shall use the clause with its Alternate I to waive the 50 percent requirement if the conditions at 19.1308(c) apply.

(c) For use of clause 52.219–YY, Nonmanufacturer Rule, see the prescription at 19.507(h)(2).

■ 65. Amend section 19.403 by revising paragraph (d) to read as follows:

19.1403 Status as a service-disabled veteran-owned small business concern.

* * * * *

(d) Any service-disabled veteran-owned small business concern (nonmanufacturer) is required to meet the requirements in 19.1407(c) to receive a benefit under this program.

19.1407 [Redesignated as 19.1408]

■ 66. Redesignate section 19.1407 as section 19.1408.

■ 67. Add new section 19.1407 to read as follows:

19.1407 Performance of work requirements.

(a) *Limitation on subcontracting.* To be awarded a contract or order under an SDVOSB set-aside or a contract as an SDVOSB sole source, the SDVOSB concern is required to—

(1) For services (except construction), spend at least 50 percent of the cost incurred for personnel on its own employees or the employees of other SDVOSBs;

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

(3) For general construction, spend at least 15 percent of the cost (not including the costs of materials) incurred for personnel on its own employees or the employees of other SDVOSBs; or

(4) For construction by special trade contractors, incur at least 25 percent of the cost (not including the cost of materials) incurred for personnel on its own employees or the employees of other SDVOSBs.

(b) *Compliance period.* An SDVOSB contractor is required to comply with the limitation on subcontracting—

(1) For a contract that has been set aside or awarded on a sole source basis to an SDVOSB concern, by the end of the base term and then by the end of

each subsequent option period.

However, the contracting officer may instead require the contractor to comply with the limitation on subcontracting by the end of the performance period for each order issued under the contract; and

(2) For an order set aside for SDVOSB contractor as described in 8.405–5 and 16.505(b)(2)(i)(F), by the end of the performance period for the order.

(c) *Nonmanufacturer rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

(d) The contracting officer shall document an SDVOSB contractor's compliance with the limitation on subcontracting as part of its performance evaluation in accordance with the procedures set forth in 42.1502.

■ 68. Amend the newly designated section 19.1408 by removing from the body paragraph “or reserved for,” and adding a sentence to the end of the paragraph to read as follows:

19.1408 Contract clauses.

* * * For contracts that are set-aside, the contracting officer shall indicate in paragraph (e) of the clause whether compliance with the limitations on subcontracting is required at the contract level or order level.

19.1503 [Amended]

■ 69. Amend section 19.1503 by removing paragraph (g).

19.1507 [Redesignated as 19.1508]

■ 70. Redesignate section 19.1507 as section 19.1508.

■ 71. Add new section 19.1507 to read as follows:

19.1507 Performance of work requirements.

(a) *Limitation on subcontracting.* To be awarded a contract or order that is set aside for an EDWOSB or for a WOSB eligible under the WOSB Program, the contractor is required to perform—

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

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

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

(4) For construction by special trade contractors, at least 25 percent of the

cost with its own employees (not including the cost of materials).

(b) *Compliance period.* An EDWOSB or WOSB is required to comply with the limitation on subcontracting—

(1) For a contract that has been set aside, by the end of the base term and then by the end of each subsequent option period. However, the contracting officer may instead require the contractor to comply with the limitation on subcontracting by the end of the performance period for each order issued under the contract; and

(2) For an order set aside as described in 8.405–5 and 16.505(b)(2)(i)(F), by the end of the performance period for the order.

(c) *Nonmanufacturer rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

(d) The contracting officer shall document an EDWOSB or WOSB contractor's compliance with the limitation on subcontracting as part of its performance evaluation in accordance with the procedures set forth in 42.1502.

■ 72. Revise section 19.1508 by—

■ a. Redesignating paragraph (a) as paragraph (a)(1);

■ b. Removing from the newly designated paragraph (a)(1) “or reserved”;

■ c. Adding paragraph (a)(2);

■ d. Redesignating paragraph (b) as paragraph (b)(1);

■ e. Removing from the newly designated paragraph (b)(1) “or reserved”; and

■ f. Adding paragraph (b)(2).

The additions to read as follows:

19.1508 Contract clauses.

(a) * * *

(2) For contracts that are set aside, the contracting officer shall indicate in paragraph (e) of the clause whether compliance with the limitations on subcontracting is required at the contract level or order level.

(b) * * *

(2) For contracts that are set aside, the contracting officer shall indicate in paragraph (e) of the clause whether compliance with the limitations on subcontracting is required at the contract level or order level.

Part 42—Contract Administration and Audit Services

■ 73. Amend section 42.1503 by revising paragraph (b)(2)(vi) to read as follows:

42.1503 Procedures.

* * * * *

- (b) * * *
- (2) * * *

(vi) Other (as applicable) (e.g., compliance with limitation on subcontracting, late or nonpayment to subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost or pricing data, terminations, suspension and debarments).

* * * * *

Part 52—Solicitation Provisions and Contract Clauses

- 74. Amend section 52.204–8 by—
 - a. Revising the date of the clause;
 - b. Revising paragraph (c)(1)(x);
 - c. Adding paragraph (c)(1)(x)(C); and
 - d. Adding Alternate I.

The revisions and additions to read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (Date)

* * * * *

(c)(1) * * *

(x) 52.219–1, Small Business Program Representations (Basic, Alternates I and II). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

* * * * *

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

* * * * *

Alternate I (DATE). As prescribed in 4.1202(a), substitute the following paragraph (a) for paragraph (a) of the basic provision:

(a)(1) The North American Industry Classification System (NAICS) codes and corresponding size standards for this acquisition are as follows; the categories or portions these NAICS codes are assigned to are specified elsewhere in the solicitation:

NAICS code	Size standard
—	—
—	—
—	—

[Contracting Officer to insert NAICS codes and size standards].

(2) 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 (i.e. nonmanufacturer), is 500 employees.

- 75. Amend section 52.212–1 by revising the date of the provision and paragraph (a) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code(s) and small business size standard(s) for this acquisition appear elsewhere in the solicitation. However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

* * * * *

- 76. Amend section 52.212–5 by—
 - a. Revising the date of the clause;
 - b. Revising paragraphs (b)(11), (b)(12), (b)(14), (b)(15), (b)(19), and (b)(21) through (b)(24);
 - c. Redesignating paragraphs (b)(25) through (b)(58) as paragraphs (b)(27) through (b)(59), respectively; and
 - d. Adding new paragraphs (b)(25) and (b)(26).

The additions and revisions to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *
 __ (11)(i) 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award (DATE) (15 U.S.C. 657a).

__ (ii) Alternate I (DATE) of 52.219–3.

__ (12)(i) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DATE) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

__ (ii) Alternate I (DATE) of 52.219–4.

* * * * *

__ (14)(i) 52.219–6, Notice of Total Small Business Set-Aside (DATE) (15 U.S.C. 644).

__ (ii) Alternate I (DATE).

__ (15)(i) 52.219–7, Notice of Partial Small Business Set-Aside (DATE) (15 U.S.C. 644).

__ (ii) Alternate I (DATE) of 52.219–7.

* * * * *

__ (19) 52.219–14, Limitations on Subcontracting (DATE) (15 U.S.C. 637(a)(14)).

* * * * *

__ (21) 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (DATE) (15 U.S.C. 657 f).

__ (22) 52.219–28, Post Award Small Business Program Rerepresentation (DATE) (15 U.S.C. 632(a)(2)).

__ (23) 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically

Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (DATE) (15 U.S.C. 637(m)).

__ (24) 52.219–30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (DATE) (15 U.S.C. 637(m)).

__ (25) 52.219–XX, Notice of Small Business Reserve (DATE) (15 U.S.C. 644(r)).

__ (26) 52.219–YY, Nonmanufacturer Rule (DATE) (15 U.S.C. 637(a)(17)).

__ (i) Alternate I (DATE) of 52.219–YY.

* * * * *

- 77. Amend section 52.219–1 by—
 - a. Revising the date of the clause and paragraph (b)(3);
 - b. Removing the heading from paragraph (d) and paragraph (d)(1);
 - c. Redesignating paragraph (d)(2) as the introductory text of paragraph (d);
 - d. Redesignating paragraphs (d)(2)(i) through (iii) as paragraphs (d)(1) through (3);
 - e. Removing from the newly designated introductory paragraph (d) “Under” and adding “Notice. Under” in its place; and
 - f. Adding Alternate II to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Rerepresentations (Date)

* * * * *

(b) * * *

(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 i.e. nonmanufacturer, is 500 employees.

* * * * *

Alternate II (DATE). As prescribed in 19.309(a)(3), substitute the following paragraphs (b) and (c)(1) for paragraphs (b) and (c)(1) of the basic provision:

(b)(1) The North American Industry Classification System (NAICS) codes and corresponding size standards for this acquisition are as follows; the categories or portions these NAICS codes are assigned to are specified elsewhere in the solicitation:

NAICS code	Size standard
—	—
—	—
—	—

[Contracting Officer to insert NAICS codes and size standards].

(2) 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 (i.e. nonmanufacturer), is 500 employees.

(c) *Representations.*

(1) The offeror shall represent its small business size status for each one of the NAICS codes assigned to this acquisition under which it is submitting an offer.

NAICS code	Small business concern (yes/no)
—	—
—	—
—	—

- 78. Amend section 52.219–3 by—
- a. Revising the introductory paragraph, the date of the clause, and paragraph (a);
- b. Removing from paragraph (b)(1) “or reserved for,”
- c. Revising paragraphs (d), (e), and (f); and
- d. Revising Alternate I.

The revised text to read as follows:

52.219–3 Notice of HUBZone Set-Aside or Sole Source Award.

As prescribed in 19.1309(a)(1), insert the following clause:

Notice of HUBZone Set-Aside or Sole Source Award (Date)

(a) *Definition.* See 13 CFR 125.1 and 126.103 for definitions of terms used in the clause.

* * * * *

(d) *Limitation on subcontracting.* The Contractor shall spend—

- (1) For services (except construction), at least 50 percent of the cost of contract performance incurred for personnel on its own employees or employees of other HUBZone small business concerns;
- (2) For supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, in a HUBZone;
- (3) For general construction—
 - (i) At least 15 percent of the cost of contract performance incurred for personnel on its own employees;
 - (ii) At least 50 percent of the cost of the contract performance incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors; and
 - (iii) No more than 50 percent of the cost of contract performance incurred for personnel on concerns that are not HUBZone small business concerns; or
- (4) For construction by special trade contractors—
 - (i) At least 25 percent of the cost of contract performance incurred for personnel on its own employees;
 - (ii) At least 50 percent of the cost of the contract performance incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors;
 - (iii) No more than 50 percent of the cost of contract performance to be incurred for

personnel on concerns that are not HUBZone small business concerns.

(e) A HUBZone small business contractor shall comply with the limitation on subcontracting as follows:

(1) For contracts, in accordance with (b)(1) and (2) of this clause—

[Contracting Officer check as appropriate.]

By the end of the base term of the contract and then by the end of each subsequent option period; or

By the end of the performance period for each order issued under the contract.

(2) For set-aside orders, in accordance with (b)(3) of this clause, by the end of the performance period for the order.

(f) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause shall be performed by the aggregate of the HUBZone small business participants.

* * * * *

Alternate I (DATE). As prescribed in 19.1309(a)(2), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

- (3) For general construction, at least 15 percent of the cost of the contract performance to be incurred for personnel shall be spent on the concern’s employees; or
- (4) For specialty trade construction, at least 25 percent of the cost of the contract performance to be incurred for personnel shall be spent on the concern’s employees.

* * * * *

- 79. Amend section 52.219–4 by—
- a. Revising the introductory paragraph, date, and paragraph (a) of the clause;
- b. Removing from paragraph (b)(1)(i) “preference; and” and adding “preference;” in its place;
- c. Removing from paragraph (b)(1)(ii) “concerns.” and adding “concerns; and” in its place;
- d. Adding paragraph (b)(1)(iii);
- e. Revising paragraph (d);
- f. Removing paragraph (f);
- g. Redesignating paragraph (g) as paragraph (f); and
- h. Revising Alternate I.

The additions and revisions to read as follows:

52.219–4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

As prescribed in 19.1309(b)(1), insert the following clause:

Notice of Price Evaluation for HUBZone Small Business Concerns (Date)

(a) *Definition.* See 13 CFR 126.103 for definition of HUBZone.

(b) * * *

(1) * * *

(iii) Where the solicitation has been reserved for a HUBZone small business concern.

* * * * *

(d) *Limitation on subcontracting.* The Contractor shall spend—

(1) For services (except construction), at least 50 percent of the cost of personnel for contract performance on its own employees or employees of other HUBZone small business concerns;

(2) For supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, in a HUBZone;

(3) For general construction—

- (i) At least 15 percent of the cost of contract performance to be incurred for personnel on its own employees;
- (ii) At least 50 percent of the cost of the contract performance to be incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors; and
- (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel on concerns that are not HUBZone small business concerns; or

(4) For construction by special trade contractors—

- (i) At least 25 percent of the cost of contract performance to be incurred for on its own employees;
- (ii) At least 50 percent of the cost of the contract performance to be incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors;
- (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel on concerns that are not HUBZone small business concerns.

* * * * *

(End of clause)

Alternate I (DATE). As prescribed in 19.1309(b)(2), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

- (3) For general construction, at least 15 percent of the cost of the contract performance to be incurred for personnel on its own employees; or
- (4) For construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel on its own employees.

* * * * *

- 80. Amend section 52.219–6 by—
- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Removing paragraph (d) and Alternate I;
- d. Redesignating Alternate II as Alternate I; and
- e. Revising the date and the introductory text of the newly designated Alternate I.

The revisions to read as follows:

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

As prescribed in 19.507(c), insert the following clause:

Notice of Total Business Set-Aside (Date)

* * * * *

Alternate I (DATE). As prescribed in 19.507(c), substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * *

■ 81. Amend section 52.219–7 by—

- a. Revising the introductory text and the date of the clause;
- b. Revising paragraphs (b) and (c);
- c. Adding paragraphs (d) and (e);
- d. Removing Alternate I; and
- e. Redesignating Alternate II as Alternate I and revising the alternate.

The addition and revisions to read as follows:

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

As prescribed in 19.507(d), insert the following clause:

Notice of Partial Small Business Set-Aside (Date)

* * * * *

(b) *Applicability.* This clause applies only to contracts that have been partially set aside for small business concerns.

(c) *General.* (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns identified in 19.000(a)(3). Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected on the set-aside portion of the requirement.

(2) Small business concerns may submit offers and compete for the non-set-aside portion and the set-aside portion.

(d) The Offeror shall—

[*Contracting Officer check as appropriate.*]

__ Submit a separate offer for each portion of the solicitation for which it wants to compete (*i.e.* set-aside portion, non-set-aside portion, or both); or

__ Submit one offer to include all portions for which it wants to compete.

(e) *Partial set-asides of multiple-award contracts.*

(1) Small business concerns will not compete against other-than-small business concerns for any order issued under the part or parts of the multiple-award contract that are set aside.

(2) Small business concerns may compete for orders issued under the part or parts of the multiple-award contract that are not set aside, if the small business concern received a contract award for the non-set-aside portion.

(End of Clause)

Alternate I (DATE). As prescribed in 19.507(d), add the following paragraph (f) to the basic clause:

(f) Notwithstanding paragraph (c) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

- 82. Amend section 52.219–13 by—
- a. Revising the introductory text and the date of the clause;
- b. Redesignating the body paragraph as paragraph (b);
- c. Adding paragraph (a); and
- d. Adding Alternate I.

The revised and added text reads as follows:

52.219–13 Notice of Set-Aside of Orders.

As prescribed in 19.507(f)(1), insert the following clause:

Notice of Set-Aside of Orders (Date)

(a) The contracting officer may set aside orders to the small business concerns identified in 19.000(a)(3).

* * * * *

Alternate I (Date). As prescribed in 19.507(f)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The contracting officer will set aside orders to the small business concerns identified in 19.000(a)(3) when the conditions of FAR 19.502–2 and the specific program eligibility requirements are met, as applicable.

■ 83. Amend section 52.219–14 by—

- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Revising the introductory text of paragraph (c); and
- d. Adding paragraph (d).

The addition and revision to read as follows:

52.219–14 Limitations on Subcontracting.

As prescribed in 19.507(e), insert the following clause:

Limitations on Subcontracting (Date)

* * * * *

(c) *Limitation on subcontracting.* By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

* * * * *

(d) The Contractor shall comply with the limitation on subcontracting as follows:

(1) For contracts, in accordance with (b)(1) and (2) of this clause—

[*Contracting Officer check as appropriate.*]

__ By the end of the base term of the contract and then by the end of each subsequent option period; or

__ By the end of the performance period for each order issued under the contract.

(2) For set-aside orders, in accordance with (b)(3) of this clause, by the end of the performance period for the order.

(End of clause)

■ 84. Amend section 52.219–18 by revising the date of the clause and paragraph (d); and removing Alternate II to read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

Notification of Competition Limited to Eligible 8(a) Concerns (Date)

* * * * *

(d) The _____ [insert name of SBA’s contractor] shall notify the _____ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock.

(End of clause)

* * * * *

■ 85. Amend section 52.219–27 by—

- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Revising the heading of paragraph (d);
- d. Removing paragraph (f);
- e. Redesignating paragraph (e) as paragraph (f); and
- f. Adding new paragraph (e).

The addition and revisions to read as follows:

52.219–27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.

As prescribed in 19.1408, insert the following clause:

Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Date)

* * * * *

(d) *Limitation on subcontracting.* * * *
(e) A service-disabled veteran-owned small business concern shall comply with the limitation on subcontracting as follows:

(1) For contracts, in accordance with (b)(1) and (2) of this clause—

[*Contracting Officer check as appropriate.*]

__ By the end of the base term of the contract and then by the end of each subsequent option period; or

__ By the end of the performance period for each order issued under the contract.

(2) For set-aside orders, in accordance with (b)(3) of this clause, by the end of the performance period for the order.

* * * * *

■ 86. Amend section 52.219–28 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (b) “status” and adding “and socioeconomic status” in its place;
- c. Removing from paragraph (c) “code” and adding “code(s)” in its place, twice;
- d. Revising paragraph (g); and
- e. Adding paragraph (h).

The addition and revision to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (Date)

* * * * *

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it is, is not a small business concern under NAICS Code _____ assigned to contract number _____.

(2) [Complete only if the Contractor rerepresented itself as a small business concern in paragraph (g)(1) of this clause.] The Contractor rerepresents that it is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the Contractor rerepresented itself as a small business concern in paragraph (g)(1) of this clause.] The Contractor rerepresents that it is, is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program.

[Complete only if the Contractor rerepresented itself as a women-owned small business concern in paragraph (g)(3) of this clause.] The Contractor rerepresents that—

(i) It is, is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the rerepresentation in paragraph (g)(4)(i) of this clause is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The Contractor shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB rerepresentation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the Contractor rerepresented itself as a women-owned small business concern eligible under the WOSB Program in (g)(4) of this clause.] The Contractor represents that—

(i) It is, is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the rerepresentation in paragraph (g)(5)(i) of this clause is accurate for each EDWOSB concern participating in the joint venture. [The Contractor shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: _____.]

Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB rerepresentation.

(6) [Complete only if the Contractor rerepresented itself as a small business concern in paragraph (g)(1) of this provision.] The Contractor rerepresents as part of its offer that it is, is not a veteran-owned small business concern.

(7) [Complete only if the Contractor rerepresented itself as a veteran-owned small business concern in paragraph (g)(6) of this clause.] The Contractor rerepresents that it is, is not a service-disabled veteran-owned small business concern.

(8) [Complete only if the Contractor rerepresented itself as a small business concern in paragraph (g)(1) of this clause.] The Contractor represents that—

(i) It is, is not a HUBZone small business concern listed, on the date of this rerepresentation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It is, is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the rerepresentation in paragraph (g)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone rerepresentation.

[Contractor to sign and date and insert authorized signer's name and title.]

(h) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, when the contracting officer explicitly requires it for an order issued under a multiple-award contract.

(End of clause)

■ 87. Amend section 52.219–29 by—

- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Revising the heading of paragraph (d);
- d. Removing paragraph (f);
- e. Redesignating paragraph (e) as paragraph (f); and
- f. Adding new paragraph (e).

The addition and revisions to read as follows:

52.219–29 Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.

As prescribed in 19.1508(a), insert the following clause:

Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Date)

* * * * *

(d) *Limitation on subcontracting.* * * *

(e) An EDWOSB concern shall comply with the limitation on subcontracting as follows:

(1) For contracts, in accordance with (b)(1) and (2) of this clause—

[Contracting Officer check as appropriate.]

By the end of the base term of the contract and then by the end of each subsequent option period; or

By the end of the performance period for each order issued under the contract.

(2) For set-aside orders, in accordance with (b)(3) of this clause, by the end of the performance period for the order.

* * * * *

■ 88. Amend section 52.219–30 by—

- a. Revising the introductory text and the date of the clause;
- b. Removing from paragraph (b)(1) “or reserved”;
- c. Revising the heading of paragraph (d);
- d. Removing paragraph (f);
- e. Redesignating paragraph (e) as paragraph (f); and
- f. Adding new paragraph (e).

The additions and revisions to read as follows:

52.219–30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

As prescribed in 19.1508(b), insert the following clause:

Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns Eligible Under The Women-Owned Small Business Program (Date)

* * * * *

(d) *Limitation on subcontracting.* * * *

(e) A WOSB concern eligible under the WOSB Program shall comply with the limitation on subcontracting as follows:

(1) For contracts, in accordance with (b)(1) and (2) of this clause—

[Contracting Officer check as appropriate.]

By the end of the base term of the contract and then by the end of each subsequent option period; or

By the end of the performance period for each order issued under the contract.

(2) For set-aside orders, in accordance with (b)(3) of this clause, by the end of the performance period for the order.

* * * * *

■ 89. Add section 52.219–XX to read as follows:

52.219–XX Notice of Small Business Reserve.

As prescribed in 19.507(g), insert the following clause:

Notice of Small Business Reserve (Date)

(a) *Applicability.* This clause applies only to contracts that have been reserved for any of the small business concerns identified at 19.000(a)(3). The small business program eligibility requirements apply.

(b) *General.* (1) This solicitation contains a reserve for one or more small business concerns identified at 19.000(a)(3) and the applicable small business program.

(2) The small business concern(s) eligible for participation in the reserve shall submit one offer to include all portions of the solicitation for which consideration for award is wanted. Award of the contract will be based on criteria identified elsewhere in the solicitation.

(c) If there are two or more contract awards to small businesses as a result of the reserve, the Contracting Officer may, at his or her discretion, set aside an order or orders for the small business concerns identified in 19.000(a)(3) and the applicable small business program, that were awarded contracts under a reserve, provided the requirements of 19.502-2(b) are met.

(d) If there is only one contract award to a small business as a result of the reserve, the Contracting Officer may, at his or her discretion, issue an order or orders directly to the small business concern.

(End of clause)

■ 90. Add section 52.219-YY to read as follows:

52.219-YY Nonmanufacturer Rule.

As prescribed in 19.507(h)(1), insert the following clause:

Nonmanufacturer Rule (DATE)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Applicability.* This clause applies to contracts that have been set aside, in total or in part, or orders under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F) that have been set aside, for any of the small business concerns identified in 19.000(a)(3).

(c)(1) The contractor shall—

(i)(A) Provide the end item of a small business manufacturer, that has been manufactured or produced in the United States or its outlying areas; or

(B) If this procurement is an order as described in 8.405-5 or 16.505(b)(2)(i)(F) or processed under simplified acquisition procedures (see part 13), and the total amount does not exceed \$25,000, provide the end item of any domestic manufacturer;

(ii) Not exceed 500 employees;

(iii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iv) Take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice.

(2) In addition to the requirements set forth in (c)(1) of this clause, when the end item being acquired is a kit of supplies or other goods, 50 percent of the total value of the components of the kit shall be manufactured in the United States or its outlying areas by small business concerns. Where the Government has specified an item for the kit which is not produced by U.S. small business

concerns, such items shall be excluded from the 50 percent calculation. See 13 CFR 121.406(c) for further information regarding nonmanufacturers.

(3) For size determination purposes, there can be only one manufacturer of the end product being acquired. For the purposes of the nonmanufacturer rule, the manufacturer of the end product being acquired is the concern that transforms raw materials and/or miscellaneous parts or components into the end product. Firms which only minimally alter the item being procured do not qualify as manufacturers of the end item, such as firms that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer, where those identical modifications can be performed by and are available from the manufacturer of the existing end item. See 13 CFR 121.406 for further information regarding manufacturers.

(End of clause)

Alternate I (DATE). As prescribed in 19.507(h)(2), substitute the following paragraph in place of paragraph (c)(1)(i)(A) of the basic clause:

(i)(A) Provide the end item of a HUBZone small business manufacturer, that has been manufactured or produced in the United States or its outlying areas; or

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