

FEDERAL ACQUISITION CIRCULAR

January 12, 2011

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Looseleaf pages

Federal Acquisition Circular (FAC) 2005-47 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-47 is effective December 13, 2010, except for Items II and VI, which are effective January 12, 2011.

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FAC 2005-47 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR final rule amendments.
**Please do not file these pages until their effective date of
January 12, 2011.**

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\$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <http://www.fedbizopps.gov>.

“Head of the agency” (see “agency head”).

“Head of the contracting activity” means the official who has overall responsibility for managing the contracting activity.

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“HUBZone” means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, or redesignated areas, as defined in 13 CFR 126.103.

“HUBZone contract” means a contract awarded to a “HUBZone small business” concern through any of the following procurement methods:

(1) A sole source award to a HUBZone small business concern.

(2) Set-aside awards based on competition restricted to HUBZone small business concerns.

(3) Awards to HUBZone small business concerns through full and open competition after a price evaluation preference in favor of HUBZone small business concerns.

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration (13 CFR 126.103).

“Humanitarian or peacekeeping operation” means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing ([10 U.S.C. 2302\(8\)](#) and [41 U.S.C. 259\(d\)](#)).

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Indirect cost” means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

“Indirect cost rate” means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another

appropriate base for the same period (see also “final indirect cost rate”).

“Ineligible” means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation (48 CFR Chapter 1) and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Information security” means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) Availability, which means ensuring timely and reliable access to, and use of, information.

“Information technology” means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment that—

(i) Is acquired by a contractor incidental to a contract; or

(ii) Contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or

temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

“Inherently governmental function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing,

i.e., the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic clause with its Alternate IV if certified cost or pricing data are not expected to be required because an exception may apply, but data other than certified cost or pricing data will be required as described in [15.403-3](#).

(n) *Limitations on Pass-Through Charges.* (1) The contracting officer shall insert the provision at [52.215-22](#), Limitations on Pass-Through Charges-Identification of Subcontract Effort, in solicitations containing the clause at [52.215-23](#).

(2)(i) Except as provided in paragraph (n)(2)(ii), the contracting officer shall insert the clause [52.215-23](#), Limitations on Pass-Through Charges, in solicitations and contracts including task or delivery orders as follows:

(A) For civilian agencies, insert the clause when—

(1) The total estimated contract or order value exceeds the simplified acquisition threshold as defined in section [2.101](#) and

(2) The contemplated contract type is expected to be a cost-reimbursement type contract as defined in [Subpart 16.3](#); or

(B) For DoD, insert the clause when—

(1) The total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in [15.403-4](#); and

(2) The contemplated contract type is expected to be any contract type except—

(i) A firm-fixed-price contract awarded on the basis of adequate price competition;

(ii) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(iii) A firm-fixed-price contract for the acquisition of a commercial item;

(iv) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item;

(v) A fixed-price incentive contract awarded on the basis of adequate price competition; or

(vi) A fixed-price incentive contract for the acquisition of a commercial item.

(ii) The clause may be used when the total estimated contract or order value is below the thresholds identified in [15.408\(n\)\(2\)\(i\)](#) and for any contract type, when the contracting officer determines that inclusion of the clause is appropriate.

(iii) Use the clause [52.215-23](#) with its Alternate I when the contracting officer determines that the prospective contractor has demonstrated that its functions provide added value to the contracting effort and there are no excessive pass-through charges.

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN CERTIFIED COST OR PRICING DATA ARE REQUIRED

This document provides instructions for preparing a contract pricing proposal when certified cost or pricing data are required.

NOTE 1. There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate certified cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later data come into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the data relate to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

NOTE 2. By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual data (regardless of form or whether the data are specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

- A. You must provide the following information on the first page of your pricing proposal:
- (1) Solicitation, contract, and/or modification number;
 - (2) Name and address of offeror;
 - (3) Name and telephone number of point of contact;
 - (4) Name of contract administration office (if available);
 - (5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpressed order, or other);
 - (6) Proposed cost; profit or fee; and total;
 - (7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;
 - (8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR [Part 31](#), Cost Principles, and, if not, an explanation;
 - (9) The following statement:
This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR [15.403-5\(b\)\(1\)](#) and [Table 15-2](#). By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.
 - (10) Date of submission; and
 - (11) Name, title, and signature of authorized representative.
- B. In submitting your proposal, you must include an index, appropriately referenced, of all the certified cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.
- C. As part of the specific information required, you must submit, with your proposal—
- (1) Certified cost or pricing data (as defined at FAR [2.101](#)). You must clearly identify on your cover sheet that certified cost or pricing data are included as part of the proposal.
 - (2) Information reasonably required to explain your estimating process, including—
 - (i) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
 - (ii) The nature and amount of any contingencies included in the proposed price.
- D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the “Formats for Submission of Line Item Summaries” section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.
- E. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.
- F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.
- G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.
- H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR [15.406-2](#), submit a Certificate of Current Cost or Pricing Data.

PART 19—SMALL BUSINESS PROGRAMS

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19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act ([15 U.S.C. 631](#), *et seq.*), applicable sections of the Armed Services Procurement Act ([10 U.S.C. 2302](#), *et seq.*), the Federal Property and Administrative Services Act ([41 U.S.C. 252](#)), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), [10 U.S.C. 2323](#), and Executive Order 12138, May 18, 1979. It covers—

- (1) The determination that a concern is eligible for participation in the programs identified in this part;
- (2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;
- (3) Setting acquisitions aside for exclusive competitive participation by small business, HUBZone small business, and service-disabled veteran-owned small business concerns;
- (4) The certificate of competency program;
- (5) The subcontracting assistance program;
- (6) The “8(a)” business development program (hereafter referred to as 8(a) program), under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;
- (7) The use of women-owned small business concerns;
- (8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns;
- (9) The Small Disadvantaged Business Participation Program;
- (10) [Reserved];
- (11) The use of veteran-owned small business concerns; and
- (12) Sole source awards to HUBZone small business and service-disabled veteran-owned small business concerns.

(b) This part, except for [Subpart 19.6](#), applies only in the United States or its outlying areas. [Subpart 19.6](#) applies worldwide.

19.001 Definitions.

As used in this part—

“Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see [19.101](#)), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

“Fair market price” means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see [19.202-6](#)).

“Industry” means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>).

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

Subpart 19.1—Size Standards

19.101 Explanation of terms.

As used in this subpart—

“Affiliates.” Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located in the United States or its outlying areas.

(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(2) *Meaning of “party or parties.”* The term “party” or “parties” includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern’s voting stock.

(ii) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern’s voting stock, if the block of stock the party owns, controls, or

has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(4) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(5) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field operation, and serve as its officers, directors, prin-

cipal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships—*
(i) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consenting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(A) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(B) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(1) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(2) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.

(ii) *HUBZone joint venture.* A HUBZone joint venture of two or more HUBZone small business concerns may submit an offer for a HUBZone contract as long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided one of the following conditions apply:

(A) The aggregate total of the joint venture is small under the size standard corresponding to the NAICS code assigned to the contract.

(B) The aggregate total of the joint venture is not small under the size standard corresponding to the NAICS code assigned to the contract and either—

(1) For a revenue-based size standard, the estimated contract value exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(2) For an employee-based size standard, the estimated contract value exceeds \$10 million.

(iii) *Joint venture.* Concerns submitting offers on a particular acquisition as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination

finds general affiliation between the parties. The rules governing 8(a) Program joint ventures are described in 13 CFR 124.513.

(iv) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(v) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(vi) *Size determination for teaming arrangements.* For size determination purposes, apply the size standard tests in paragraphs (7)(i)(A) and (B) of this section when a teaming arrangement of two or more business concerns submits an offer, as appropriate.

“Annual receipts.” (1) Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffiliate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

(i) In any case of change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be restated to the accrual method. In any case, where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated on an accrual basis using the percentage of completion method.

(ii) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, “annual receipts” shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(2) Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. In calculating total receipts, the definitions and adjustments related to a change of accounting method and the completed contract method of paragraph (1) of this definition, are applicable.

“Number of employees” is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, “number of employees” means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period.

19.102 Size standards.

(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR Part 121.)

(b) Small business size standards are applied by—

(1) Classifying the product or service being acquired in the industry whose definition, as found in the North American Industry Classification System (NAICS) Manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>), best describes the principal nature of the product or service being acquired;

(2) Identifying the size standard SBA established for that industry; and

(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.

(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best

describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a “nonmanufacturer”), is a small business if it has no more than 500 employees, and—

(1) Except as provided in paragraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas. The term “nonmanufacturer” includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. However, see the limitations on subcontracting at [52.219-14](#) that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

(2) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

(3) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business non-manufacturer may furnish any domestically produced or manufactured product.

(4) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant a class waiver so that a nonmanufacturer does not have to furnish the product of a small business. For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available on SBA’s Internet Homepage at <http://www.sba.gov/gc>. Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

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

(6) Requests for waivers shall be sent to the—

Associate Administrator for Government Contracting
United States Small Business Administration
Mail Code 6250
409 Third Street, SW
Washington, DC 20416.

(7) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in [Part 13](#)—

(A) Is set aside for small business; and

(B) Is not anticipated to exceed \$25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

(8) For non-manufacturer rules pertaining to HUBZone contracts, see [19.1303\(e\)](#).

(g) The industry size standards are published by the Small Business Administration and are available via the Internet at <http://www.sba.gov/size>.

(e) Upon receipt of a protest that is not premature, the contracting officer shall withhold award and forward the protest to—

Small Business Administration
Assistant Administrator for SDBCE
409 Third Street, SW
Washington, DC 20416.

The contracting officer shall send to SBA—

(1) The written protest and any accompanying materials;

(2) The date the protest was received;

(3) A copy of the protested concern’s representation as a small disadvantaged business, and the date of such representation; and

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

(f) When the contracting officer makes a written determination that award must be made to protect the public interest, award may be made notwithstanding the protest.

(g) The SBA Assistant Administrator for Small Disadvantaged Business Certification and Eligibility will notify the protestor and the contracting officer of the date the protest was received and whether it will be processed or dismissed for lack of timeliness or specificity. For protests that are not dismissed, the SBA will, within 15 working days after receipt of the protest, determine the disadvantaged status of the challenged offeror and will notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless it is appealed and—

(1) The contracting officer receives the SBA’s decision on the appeal before award; or

(2) The contracting officer has agreed to terminate the contract, as appropriate, based on the outcome of the appeal (see 13 CFR 124, Subpart B).

(h) If the contracting officer does not receive an SBA determination within 15 working days after the SBA’s receipt of the protest, the contracting officer shall presume that the challenged offeror is disadvantaged and may award the contract, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(i) An SBA determination may be appealed by—

(1) The party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

(j) The appeal must be filed with the SBA’s Administrator or designee within five working days after receipt of the determination. If the contracting officer receives the SBA’s decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it

will not apply to the instant acquisition (but see paragraph (g)(2) of this section).

19.306 Protesting a firm’s status as a HUBZone small business concern.

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

“Interested party” has the meaning given in 13 CFR 126.103.

(b) “*HUBZone Small Business Status*”. (1) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror’s HUBZone small business concern status.

(2) For all other acquisitions, an offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror’s qualified HUBZone small business concern status.

(c) Protests relating to whether a qualified HUBZone small business concern is a small business for purposes of any Federal program are subject to the procedures of [Subpart 19.3](#). Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

(d) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA’s Associate Administrator for the HUBZone Program (Director/HUB).

(e)(1) The protest of an offeror that is an interested party must be submitted by—

(i) For sealed bids:

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

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

(ii) For negotiated acquisitions, the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

(2) Any protest submitted after these time limits is untimely, unless it is submitted by the SBA or the contracting officer. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protestor.

(f) Except for premature protests, the contracting officer shall forward all protests received, notwithstanding whether the contracting officer believes that the protest is not sufficiently specific, timely, or submitted by an interested party. The contracting officer shall also forward a referral letter with the information required by 13 CFR 126.801(e).

(g)(1) Protests may be submitted in person or by facsimile, express delivery service, or U.S. mail (postmarked within the applicable time period) to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Fax (202) 205-7167.

(2) The Director/HUB will notify the protester and the contracting officer that the protest was received and indicate whether the protest will be processed or dismissed for lack of timeliness or specificity. A protest will be dismissed if SBA determines the protester is not an interested party.

(h) SBA will determine the HUBZone status of the protested HUBZone small business concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(i) SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Deputy Administrator for Government Contracting and Administrator for Government Contracting and 8(a) Business Development(AA/GC&BD).

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

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

(l) The party appealing the decision must provide notice of the appeal to the contracting officer and either the protested HUBZone small business concern or the original protester, as appropriate. SBA will not consider additional information or changed circumstances that were not disclosed at the time of the Director/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

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

after award will not apply to that acquisition. The AA/GC&BD's decision is the final decision.

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

(a) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's service-disabled veteran-owned small business status. For service-disabled veteran-owned small business set-asides, any interested party may protest the apparently successful offeror's service-disabled veteran-owned small business concern status.

(b) Protests relating to whether a service-disabled veteran-owned small business concern is a small business for purposes of any Federal program are subject to the procedures of [Subpart 19.3](#). Protests relating to small business size status for the acquisition and the service-disabled veteran-owned small business status requirements will be processed concurrently by SBA.

(c) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for Government Contracting. The SBA regulations are found at 13 CFR 125.24 through 125.28.

(d) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(e) Except for premature protests, the contracting officer must forward to SBA by mail or facsimile transmission (202-205-6390) any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely. The protest must be accompanied by a referral letter, with the notation on the envelope or facsimile cover sheet: "Attn: Service-Disabled Veteran Status Protest," and be sent to Associate Administrator for Government Contracting AA/GC, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

(f) The referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including the solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the contract was sole-source or set-aside; whether the protestor submitted an offer; whether

the protested concern was the apparent successful offeror; when the protested concern submitted its offer (*i.e.*, made the self-representation that it was a service-disabled veteran-owned small business concern); whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted; when the protester received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded.

(g) The Associate Administrator for Government Contracting will notify the protester and the contracting officer of the date the protest was received and whether the protest will be processed or dismissed for lack of timeliness or specificity.

(h) All questions about service-disabled veteran-owned small business size or status must be referred to the SBA for resolution. When making its determinations of veteran, service-disabled veteran, or service-disabled veteran with a permanent and severe disability status, the SBA will rely upon determinations made by the Department of Veteran's Affairs, Department of Defense determinations, or such determinations identified by documents provided by the U.S. National Archives and Records Administration. SBA will determine the service-disabled veteran-owned small business status of the protested concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

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

19.308 Solicitation provisions and contract clauses.

(a)(1) Insert the provision at [52.219-1](#), Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

(2) Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard.

(b) Insert the provision at [52.219-22](#), Small Disadvantaged Business Status, in solicitations that include the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting. Use the provision with its Alternate I in solicitations for acquisitions for which a price evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis.

(c) When contracting by sealed bidding, insert the provision at [52.219-2](#), Equal Low Bids, in solicitations when the contract will be performed in the United States or its outlying areas.

(d) Insert the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

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(d)(1) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm or www.sba.gov/hubzone;

(ii) In writing to the—

Director/HUB,
U.S. Small Business Administration,
409 3rd Street, SW.,
Washington DC 20416; or

(iii) E-mail at hubzone@sba.gov.

(2) Protests challenging HUBZone small business concern size status must be filed in accordance with 13 CFR 121.411.

19.704 Subcontracting plan requirements.

(a) Each subcontracting plan required under [19.702\(a\)\(1\)](#) and (2) must include—

(1) Separate percentage goals for using small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns as subcontractors;

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

(4) A description of the method used to develop the subcontracting goals;

(5) A description of the method used to identify potential sources for solicitation purposes;

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business

(including ANCs and Indian tribes), and women-owned small business concerns;

(7) The name of an individual employed by the offeror who will administer the offeror’s subcontracting program, and a description of the duties of the individual;

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

(9) Assurances that the offeror will include the clause at [52.219-8](#), Utilization of Small Business Concerns (see [19.708\(a\)](#)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction) to adopt a plan that complies with the requirements of the clause at [52.219-9](#), Small Business Subcontracting Plan (see [19.708\(b\)](#));

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS;

(A) The ISR shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(B) The SSR shall be submitted as follows: For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using the eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror’s official responsible for acknowledging receipt of or rejecting the ISRs to all first-tier subcontractors with subcontracting plans so

they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see [19.701](#)) that contains all the elements required by the clause at [52.219-9](#), Small Business Subcontracting Plan, except goals. Master plans shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans. Changes required to update master plans are not effective until approved by the contracting officer. A master plan, when incorporated in an individual plan, shall apply to that contract throughout the life of the contract.

(c) For multiyear contracts or contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see [19.705-2\(a\)](#)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by paragraph (a) of this section and shall contain separate statements and goals for the basic contract and for each option.

(d) A commercial plan (as defined in [19.701](#)) is the preferred type of subcontracting plan for contractors furnishing commercial items. Once a contractor's commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item. The contractor shall—

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

(2) Submit a new commercial plan, 30 working days before the end of the Contractor's fiscal year, to the contract-

ing officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;

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

(4) Comply with the reporting requirements stated in paragraph (a)(10) of this section by submitting one SSR in eSRS, for all contracts covered by its commercial plan. This report will be acknowledged or rejected in eSRS by the contracting officer who approved the plan. The report shall be submitted within 30 days after the end of the Government's fiscal year.

19.705 Responsibilities of the contracting officer under the subcontracting assistance program.

19.705-1 General support of the program.

The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award-fee contracting (see the clause at [52.219-10](#), Incentive Subcontracting Program, and [19.708\(c\)](#)). This subsection does not apply to SDB subcontracting (see [19.1203](#)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan.

19.705-2 Determining the need for a subcontracting plan.

The contracting officer must take the following actions to determine whether a proposed contractual action requires a subcontracting plan:

(a) Determine whether the proposed contractual action will meet the dollar threshold in [19.702\(a\)](#)(1) or (2). If the action includes options or similar provisions, include their value in determining whether the threshold is met.

(b) Determine whether subcontracting possibilities exist by considering relevant factors such as—

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

(2) Whether there are likely to be product prequalification requirements.

Subpart 19.8—Contracting with the Small Business Administration (The 8(a) Program)

19.800 General.

(a) Section 8(a) of the Small Business Act ([15 U.S.C. 637\(a\)](#)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. The SBA’s subcontractors are referred to as “8(a) contractors.”

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

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

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

(e) Before deciding to set aside an acquisition in accordance with [Subpart 19.5](#), [19.13](#), or [19.14](#), the contracting officer should review the acquisition for offering under the 8(a) Program.

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

19.801 [Reserved]

19.802 Selecting concerns for the 8(a) Program.

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

19.803 Selecting acquisitions for the 8(a) Program.

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

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

- (1) Identification of the concern and its owners.

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

(3) The firm’s present production capacity and related facilities.

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

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

(i) The concern’s capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

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

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency contracting activity to offer the acquisition to the 8(a) Program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

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

(2) A statement as to how any additional needed equipment and real property will be provided in order to ensure that the firm will be fully capable of satisfying the agency’s requirements;

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

(4) Either—

(i) If sole source request—

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

(B) A statement that the firm is eligible in terms of NAICS code, business support levels, and business activity targets; or

(ii) If competitive, a statement that at least two 8(a) firms are considered capable of satisfying the agency’s requirements and a statement that the firms are also eligible in terms of the NAICS code, business support levels, and business activity targets. If requested by the contracting activity, SBA will identify at least two such firms and provide information concerning the firms’ capabilities.

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

cific 8(a) firm, for the 8(a) Program in general, or for 8(a) competition.

19.804 Evaluation, offering, and acceptance.

19.804-1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) Program, the agency should evaluate—

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

(1) Quantities required or the number of construction projects planned; and

(2) Performance or delivery requirements, including required monthly production rates, when applicable;

(b) Its current and future plans to acquire items or work similar in nature and complexity to that specified in the business plan;

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

(d) The impact of any delay in delivery;

(e) Whether the items or work have previously been acquired using small business set-asides; and

(f) Any other pertinent information about known 8(a) contractors, the items, or the work. This includes any information concerning the firms' capabilities. When necessary, the contracting agency shall make an independent review of the factors in [19.803\(a\)](#) and other aspects of the firms' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) Program.

19.804-2 Agency offering.

(a) After completing its evaluation, the agency must notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification must identify the time frames within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The notification must also contain the following information applicable to each prospective contract:

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

(2) The estimated period of performance.

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

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

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

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

(7) The type of contract anticipated.

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

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

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

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) Program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all known 8(a) concerns, including HUBZone 8(a) concerns, that have expressed an interest in being considered for the specific requirement.

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

(14) A request, if appropriate, that a requirement with an estimated contract value under the applicable competitive threshold be awarded as an 8(a) competitive contract (see [19.805-1\(d\)](#)).

(15) A request, if appropriate, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole source contract (see [19.805-1\(b\)](#)).

(16) Any other pertinent and reasonably available data.

(b)(1) An agency offering a construction requirement for which no specific offeror is nominated should submit it to the SBA District Office for the geographical area where the work is to be performed.

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

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

(c) All requirements for 8(a) competition, other than construction, should be forwarded to the district office servicing the geographical area in which the contracting office is

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

19.804-3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 10 working days of receipt of the offer if the contract is likely to exceed the simplified acquisition threshold and within 2 days of receipt if the contract is at or below the simplified acquisition threshold. The contracting agency may grant an extension of these time periods. If SBA does not respond to an offering letter within 10 days, the contracting activity may seek SBA's acceptance through the Associate Administrator.

(b) If the acquisition is accepted as a sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, the SBA will accept a contracting activity's recommended source.

(c) For acquisitions not exceeding the simplified acquisition threshold, when the contracting activity makes an offer to the 8(a) Program on behalf of a specific 8(a) firm and does not receive a reply to its offer within 2 days, the contracting activity may assume the offer is accepted and proceed with award of an 8(a) contract.

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

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

(2) If SBA and the contracting activity are unable to agree on a NAICS code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) Program, appeal the contracting officer's determination to the head of the agency pursuant to [19.810](#), or appeal the NAICS code designation to the SBA Office of Hearings and Appeals under Subpart C of 13 CFR Part 134.

19.804-4 Repetitive acquisitions.

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

(a) Whether the requirement should be a competitive 8(a) award;

(b) A nominated firm's eligibility, whether or not it is the same firm that performed the previous contract;

(c) The effect that contract award would have on the equitable distribution of 8(a) contracts; and

(d) Whether the requirement should continue under the 8(a) Program.

19.804-5 Basic ordering agreements.

(a) The contracting activity must offer, and SBA must accept, each order under a basic ordering agreement (BOA) in addition to offering and accepting the BOA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of orders issued under a specific BOA to exceed the competitive threshold amount in [19.805-1](#).

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

19.804-6 Indefinite delivery contracts.

(a) Separate offers and acceptances must not be made for individual orders under multiple award, Federal Supply Schedule (FSS), multi-agency contracts or Governmentwide acquisition contracts. SBA's acceptance of the original contract is valid for the term of the contract.

(b) The requirements of [19.805-1](#) of this part do not apply to individual orders that exceed the competitive threshold as long as the original contract was competed.

(c) An 8(a) concern may continue to accept new orders under a multiple award, Federal Supply Schedule (FSS), multi-agency contract or Governmentwide acquisition contract even after a concern's program term expires, the concern otherwise exits the 8(a) Program, or the concern becomes other than small for the NAICS code assigned under the contract.

19.805 Competitive 8(a).

19.805-1 General.

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the SBA under the 8(a) Program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

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

(2) The anticipated total value of the contract, including options, will exceed \$6.5 million for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$4 million for all other acquisitions.

(b) Where an acquisition exceeds the competitive threshold, the SBA may accept the requirement for a sole source 8(a) award if—

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or

(2) SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation.

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

(d) The SBA Associate Administrator for 8(a) Business Development (AA/BD) may approve an agency request for a competitive 8(a) award below the competitive thresholds. Such requests will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition. In determining whether a request to compete below the threshold will be approved, the AA/BD will, in part, consider the extent to which the requesting agency is supporting the 8(a) Program on a noncompetitive basis. The agency may include recommendations for competition below the threshold in the offering letter or by separate correspondence to the AA/BD.

19.805-2 Procedures.

(a) Offers shall be solicited from those sources identified in accordance with [19.804-3](#).

(b) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria.

(1) In sealed bid acquisitions, upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (*i.e.*, first low, second low, etc.) with the total evaluated price for each offer, differentiating between basic requirements and any options. The SBA will consider the eligibility of the first low offeror. If the first low offeror is not determined to be eligible, the SBA will consider the eligibility of the next low offeror until an eligible offeror is identified. The SBA will determine the eligibility of the firms and advise the contracting officer within 5 working days after its receipt of the list of bidders. Once eligibility has been established by the SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.

(2) In negotiated acquisition, the SBA will determine eligibility when the successful offeror has been established by the agency and the contract transmitted for signature unless a

referral has been made under [19.809](#), in which case the SBA will determine eligibility at that point.

(c) In any case in which a firm is determined to be ineligible, the SBA will notify the firm of that determination.

(d) The eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a solicitation or proposed contract award. Any party with information concerning the eligibility of an 8(a) firm to continue participation in the 8(a) Program may submit such information to the SBA in accordance with 13 CFR 124.517.

19.806 Pricing the 8(a) contract.

(a) The contracting officer shall price the 8(a) contract in accordance with [Subpart 15.4](#). If required by [Subpart 15.4](#), the SBA shall obtain certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine the proposed price to be fair and reasonable in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

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

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

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with [19.810](#).

19.807 Estimating fair market price.

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

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

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

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 ([15 U.S.C. 631](#) note) created the HUBZone Program.

(b) The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

19.1302 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

19.1303 Status as a HUBZone small business concern.

(a) Status as a HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR Part 126.

(b) If the SBA determines that a concern is a HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm. Only firms on the list are HUBZone small business concerns, eligible for HUBZone preferences. HUBZone preferences apply without regard to the place of performance. Information on HUBZone small business concerns can also be obtained at www.sba.gov/hubzone or by writing to the Director for the HUBZone Program (Director/HUB) at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at hubzone@sba.gov.

(c) A joint venture may be considered a HUBZone small business concern if it meets the criteria in the explanation of affiliates (see [19.101](#)).

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

(e) A HUBZone small business concern may submit an offer for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at 13 CFR 121.406(b)(1) and if the small business manufacturer providing the end item is also a HUBZone small business concern.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(2) For HUBZone contracts 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.

19.1304 Exclusions.

This subpart does not apply to—

- (a) Requirements that can be satisfied through award to—
 - (1) Federal Prison Industries, Inc. (see [Subpart 8.6](#)); or
 - (2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see [Subpart 8.7](#));
- (b) Orders under indefinite delivery contracts (see [Subpart 16.5](#));
- (c) Orders against Federal Supply Schedules (see [Subpart 8.4](#));
- (d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;
- (e) Requirements that do not exceed the micro-purchase threshold; or
- (f) Requirements for commissary or exchange resale items.

19.1305 HUBZone set-aside procedures.

(a) The contracting officer shall set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider HUBZone set-asides before considering HUBZone sole source awards (see [19.1306](#)) or small business set-asides (see [Subpart 19.5](#)).

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

- (1) Offers will be received from two or more HUBZone small business concerns; and
- (2) Award will be made at a fair market price.

(c) A contracting officer may set aside acquisitions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, for competition restricted to HUBZone small business concerns at the sole discretion of the contracting officer, provided the requirements of paragraph (b) of this section can be satisfied.

(d) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see [Subpart 19.5](#)).

(e) The procedures at [19.202-1](#) and, except for acquisitions not exceeding the simplified acquisition threshold, at [19.402](#) apply to this section.

(1) When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center

representative is not assigned, see [19.402\(a\)](#)) to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 business days of receiving the contracting officer's notice of rejection.

(2) Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist.

(3) Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the agency, or the appeal will be deemed withdrawn. The head of the agency shall reply to SBA within 15 business days of receiving the appeal. The decision of the head of the agency shall be final.

19.1306 HUBZone sole source awards.

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (see [19.501\(c\)](#) and [6.302-5\(b\)\(5\)](#)) before considering small business set-asides (see subpart [19.5](#)), provided none of the exclusions at [19.1304](#) apply; and—

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

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

(i) \$6.5 million for a requirement within the North American Industry Classification System (NAICS) codes for manufacturing; or

(ii) \$4 million for a requirement within all other NAICS codes;

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of [Subpart 19.8](#) or has been accepted as a requirement by SBA under [Subpart 19.8](#);

(4) The acquisition is greater than the simplified acquisition threshold (see [Part 13](#));

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

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

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

19.1307 Price evaluation preference for HUBZone small business concerns.

(a) The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used—

(1) Where price is not a selection factor so that a price evaluation preference would not be considered (e.g., Architect/Engineer acquisitions); or

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

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

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

(2) Otherwise successful offers from small business concerns.

(c) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors, such as transportation costs or rent-free use of Government property, shall be added to the offer to establish the base offer before adding the factor of 10 percent.

(d) A concern that is both a HUBZone small business concern and a small disadvantaged business concern shall receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see [Subpart 19.11](#)). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference and adjustment amounts shall both be added to the base offer to arrive at the total evaluated price for that offer.

(e) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, the contracting officer shall award the contract to the HUBZone small business concern.

19.1308 Performance of work requirements (limitations on subcontracting) for general construction or construction by special trade contractors.

(a) 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.

(b) The clause at [52.219-3](#), Notice of Total HUBZone Set-Aside or Sole Source Award, or [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns, shall be used, as applicable, with its Alternate I to waive the 50 percent requirement (see [19.1309](#)) if at least two HUBZone small business concerns cannot meet the conditions of paragraph (a); but, the HUBZone prime contractor can still meet the following—

(1) For general construction, at least 15 percent of the cost of the contract performance to be incurred for personnel using the concern's employees; or

(2) For construction by special trade contractors, at least 25 percent of the cost of contract performance to be incurred for personnel using the concern's employees.

(c) See 13 CFR 125.6 for definitions of terms used in paragraph (a) of this section.

19.1309 Contract clauses.

(a) The contracting officer shall insert the clause [52.219-3](#), Notice of Total HUBZone Set-Aside or Sole Source Award, in solicitations and contracts for acquisitions that are set aside for, or awarded on a sole source basis to, HUBZone small business concerns under [19.1305](#) or [19.1306](#).

(1) The contracting officer shall use the clause with its Alternate I to waive the 50 percent requirement if the conditions at [19.1308\(b\)](#) apply.

(2) If a waiver is granted, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

(b) 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.

(1) The contracting officer shall use the clause with its Alternate I to waive the 50 percent requirement if the conditions at [19.1308\(b\)](#) apply.

(2) If a waiver is granted, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

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33.000 Scope of part.

This part prescribes policies and procedures for filing protests and for processing contract disputes and appeals.

Subpart 33.1—Protests**33.101 Definitions.**

As used in this subpart—

“Day” means a calendar day, unless otherwise specified. In the computation of any period—

(1) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(2) The last day after the act, event, or default is included unless—

(i) The last day is a Saturday, Sunday, or Federal holiday; or

(ii) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

“Filed” means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

“Interested party for the purpose of filing a protest” means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

“Protest” means a written objection by an interested party to any of the following:

(1) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(2) The cancellation of the solicitation or other request.

(3) An award or proposed award of the contract.

(4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the Government Accountability Office (GAO). (See [19.302](#) for protests of small business status, [19.305](#) for protests of disadvantaged business status, [19.306](#) for protests of HUB-Zone small business status, and [19.307](#) for protests of service-disabled veteran-owned small business status.)

(b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does

not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the Government Accountability Office;

(2) Pay appropriate costs as stated in [33.104\(h\)](#); and

(3) Require the awardee to reimburse the Government’s costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee’s intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of [Subpart 32.6](#), the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee’s negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee’s actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee’s fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under [Subpart 9.4](#).

(c) In accordance with [31 U.S.C. 1558](#), with respect to any protest filed with the GAO, if the funds available to the agency for a contract at the time a protest is filed in connection with a solicitation for, proposed award of, or award of such a contract would otherwise expire, such funds shall remain available for obligation for 100 days after the date on which the final ruling is made on the protest. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in paragraph [33.104\(c\)\(1\)](#) if the contracting officer makes a written determination that—

- (1) A protest is likely to be filed; and
 - (2) Delay of performance is, under the circumstances, in the best interests of the United States.
- (e) An interested party wishing to protest is encouraged to seek resolution within the agency (see [33.103](#)) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR Part 21).
- (f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation ([41 U.S.C. 423\(g\)](#)).

33.103 Protests to the agency.

(a) *Reference.* Executive Order 12979, Agency Procurement Protests, establishes policy on agency procurement protests.

(b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(c) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

(d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of paragraph (d)(2) of this section may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

- (i) Name, address, and fax and telephone numbers of the protester.
- (ii) Solicitation or contract number.
- (iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
- (iv) Copies of relevant documents.
- (v) Request for a ruling by the agency.
- (vi) Statement as to the form of relief requested.
- (vii) All information establishing that the protester is an interested party for the purpose of filing a protest.
- (viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.

(4) In accordance with agency procedures, interested parties may request an independent review of their protest at

a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

(e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

(f) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (f)(1) of this section.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with [15.505](#) or [15.506](#), whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall

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FEDERAL ACQUISITION REGULATION

- 52.216-12 Cost-Sharing Contract—No Fee.
- 52.216-13 [Reserved]
- 52.216-14 [Reserved]
- 52.216-15 Predetermined Indirect Cost Rates.
- 52.216-16 Incentive Price Revision—Firm Target.
- 52.216-17 Incentive Price Revision—Successive Targets.
- 52.216-18 Ordering.
- 52.216-19 Order Limitations.
- 52.216-20 Definite Quantity.
- 52.216-21 Requirements.
- 52.216-22 Indefinite Quantity.
- 52.216-23 Execution and Commencement of Work.
- 52.216-24 Limitation of Government Liability.
- 52.216-25 Contract Definitization.
- 52.216-26 Payments of Allowable Costs Before Definitization.
- 52.216-27 Single or Multiple Awards.
- 52.216-28 Multiple Awards for Advisory and Assistance Services.
- 52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.
- 52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.
- 52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.
- 52.217-1 [Reserved]
- 52.217-2 Cancellation Under Multi-year Contracts.
- 52.217-3 Evaluation Exclusive of Options.
- 52.217-4 Evaluation of Options Exercised at Time of Contract Award.
- 52.217-5 Evaluation of Options.
- 52.217-6 Option for Increased Quantity.
- 52.217-7 Option for Increased Quantity—Separately Priced Line Item.
- 52.217-8 Option to Extend Services.
- 52.217-9 Option to Extend the Term of the Contract.
- 52.218 [Reserved]
- 52.219-1 Small Business Program Representations.
- 52.219-2 Equal Low Bids.
- 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award.
- 52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.
- 52.219-5 [Reserved]
- 52.219-6 Notice of Total Small Business Set-Aside.
- 52.219-7 Notice of Partial Small Business Set-Aside.
- 52.219-8 Utilization of Small Business Concerns.
- 52.219-9 Small Business Subcontracting Plan.
- 52.219-10 Incentive Subcontracting Program.
- 52.219-11 Special 8(a) Contract Conditions.
- 52.219-12 Special 8(a) Subcontract Conditions.
- 52.219-13 [Reserved]
- 52.219-14 Limitations on Subcontracting.
- 52.219-15 [Reserved]
- 52.219-16 Liquidated Damages—Subcontracting Plan.
- 52.219-17 Section 8(a) Award.
- 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
- 52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
- 52.219-20 Notice of Emerging Small Business Set-Aside.
- 52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.
- 52.219-22 Small Disadvantaged Business Status.
- 52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
- 52.219-24 Small Disadvantaged Business Participation Program—Targets.
- 52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
- 52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.
- 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
- 52.219-28 Post-Award Small Business Program Rerepresentation.
- 52.220 [Reserved]
- 52.221 [Reserved]
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
- 52.222-3 Convict Labor.
- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
- 52.222-5 Davis-Bacon Act—Secondary Site of the Work.
- 52.222-6 Davis-Bacon Act.
- 52.222-7 Withholding of Funds.
- 52.222-8 Payrolls and Basic Records.
- 52.222-9 Apprentices and Trainees.
- 52.222-10 Compliance with Copeland Act Requirements.
- 52.222-11 Subcontracts (Labor Standards).
- 52.222-12 Contract Termination—Debarment.
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
- 52.222-14 Disputes Concerning Labor Standards.
- 52.222-15 Certification of Eligibility.
- 52.222-16 Approval of Wage Rates.
- 52.222-17 [Reserved]
- 52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
- 52.222-19 Child Labor—Cooperation with Authorities and Remedies.
- 52.222-20 Walsh-Healey Public Contracts Act.

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- 52.222-21 Prohibition of Segregated Facilities.
 - 52.222-22 Previous Contracts and Compliance Reports.
 - 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
 - 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
 - 52.222-25 Affirmative Action Compliance.
 - 52.222-26 Equal Opportunity.
 - 52.222-27 Affirmative Action Compliance Requirements for Construction.
 - 52.222-28 [Reserved]
 - 52.222-29 Notification of Visa Denial.
 - 52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).
 - 52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).
 - 52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).
 - 52.222-33 Notice of Requirement for Project Labor Agreement.
 - 52.222-34 Project Labor Agreement.
 - 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
 - 52.222-36 Affirmative Action for Workers with Disabilities.
 - 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
 - 52.222-38 Compliance with Veterans' Employment Reporting Requirements.
 - 52.222-39 [Reserved]
 - 52.222-40 Notification of Employee Rights Under the National Labor Relations Act.
 - 52.222-41 Service Contract Act of 1965.
 - 52.222-42 Statement of Equivalent Rates for Federal Hires.
 - 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
 - 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
 - 52.222-45 [Reserved]
 - 52.222-46 Evaluation of Compensation for Professional Employees.
 - 52.222-47 [Reserved]
 - 52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
 - 52.222-49 Service Contract Act—Place of Performance Unknown.
 - 52.222-50 Combating Trafficking in Persons.
 - 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.
 - 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
 - 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.
 - 52.222-54 Employment Eligibility Verification.
 - 52.223-1 Biobased Product Certification.
 - 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
 - 52.223-3 Hazardous Material Identification and Material Safety Data.
 - 52.223-4 Recovered Material Certification.
 - 52.223-5 Pollution Prevention and Right-to-Know Information.
 - 52.223-6 Drug-Free Workplace.
 - 52.223-7 Notice of Radioactive Materials.
 - 52.223-8 [Reserved]
 - 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.
 - 52.223-10 Waste Reduction Program.
 - 52.223-11 Ozone-Depleting Substances.
 - 52.223-12 Refrigeration Equipment and Air Conditioners.
 - 52.223-13 Certification of Toxic Chemical Release Reporting.
 - 52.223-14 Toxic Chemical Release Reporting.
 - 52.223-15 Energy Efficiency in Energy-Consuming Products.
 - 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.
 - 52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.
 - 52.223-18 Contractor Policy to Ban Text Messaging While Driving.
 - 52.224-1 Privacy Act Notification.
 - 52.224-2 Privacy Act.
 - 52.225-1 Buy American Act—Supplies.
 - 52.225-2 Buy American Act Certificate.
 - 52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.
 - 52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.
 - 52.225-5 Trade Agreements.
 - 52.225-6 Trade Agreements Certificate.
 - 52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.
 - 52.225-8 Duty-Free Entry.
 - 52.225-9 Buy American Act—Construction Materials.

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

- (1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.
- (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in [12.301\(c\)](#), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR [15.304](#)); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]

Technical and past performance, when combined, are _____ *[Contracting Officer state, in accordance with FAR [15.304](#), the relative importance of all other evaluation factors, when combined, when compared to price.]*

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are

negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in [12.301\(b\)\(2\)](#), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—
COMMERCIAL ITEMS (JAN 2011)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (o) of this provision.

(a) *Definitions.* As used in this provision—

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

“Service-disabled veteran-owned small business concern”—

- (1) Means a small business concern—
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the

case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) (1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs

[Offeror to identify the applicable paragraphs at (c) through (o) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

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

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a

veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

NOTE: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern.

(7) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: _____

(8) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.* [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).] The offeror represents as part of its offer that it is, is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees	Average Annual Gross Revenues
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51-100	<input type="checkbox"/> \$1,000,001-\$2 million
<input type="checkbox"/> 101-250	<input type="checkbox"/> \$2,000,001-\$3.5 million
<input type="checkbox"/> 251-500	<input type="checkbox"/> \$3,500,001-\$5 million
<input type="checkbox"/> 501-750	<input type="checkbox"/> \$5,000,001-\$10 million
<input type="checkbox"/> 751-1,000	<input type="checkbox"/> \$10,000,001-\$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(9) [Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) *General.* The offeror represents that either—

(A) It is, is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It has, has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.]

(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, 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 representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror 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 representation.

(d) *Representations required to implement provisions of Executive Order 11246*—(1) Previous contracts and compliance. The offeror represents that—

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It has, has not filed all required compliance reports.

(2) *Affirmative Action Compliance*. The offeror represents that—

(i) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Act Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic

end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#).

(g)(1) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate*. (Applies only if the clause at FAR [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

pose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

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

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2011)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).
 Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).
- (2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).
- (3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

- (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (SEPT 2006), with Alternate I (OCT 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).
- (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).
- (3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUNE 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)
- (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).
- (5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (JUL 2010) (Pub. L. 111-5).
- (6) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) ([31 U.S.C. 6101 note](#)). (Applies to contracts over \$30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

- (7) [52.219-3](#), Notice of Total HUBZone Set-Aside or Sole-Source Award (JAN 2011) ([15 U.S.C. 657a](#)).
- (8) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).
- (9) [Reserved]
- (10)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).
 - (ii) Alternate I (OCT 1995) of [52.219-6](#).
 - (iii) Alternate II (MAR 2004) of [52.219-6](#).
- (11)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).
 - (ii) Alternate I (OCT 1995) of [52.219-7](#).
 - (iii) Alternate II (MAR 2004) of [52.219-7](#).
- (12) [52.219-8](#), Utilization of Small Business Concerns (JAN 2011) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- (13)(i) [52.219-9](#), Small Business Subcontracting Plan (JAN 2011) ([15 U.S.C. 637\(d\)\(4\)](#)).
 - (ii) Alternate I (OCT 2001) of [52.219-9](#).
 - (iii) Alternate II (OCT 2001) of [52.219-9](#).
 - (iv) Alternate III (JUL 2010) of [52.219-9](#).
- (14) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).
- (15) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- (16)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
 - (ii) Alternate I (JUNE 2003) of [52.219-23](#).
- (17) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (18) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (19) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).
- (20) [52.219-28](#), Post Award Small Business Program Rerepresentation (APR 2009) ([15 U.S.C. 632\(a\)\(2\)](#)).
- (21) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).
- (22) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126).
- (23) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).
- (24) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).
- (25) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).
- (26) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

— (27) [52.222-37](#), Employment Reports on Veterans, (SEP 2010) ([38 U.S.C. 4212](#)).

— (28) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

— (29) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

— (30)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (31) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

— (32)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

— (ii) Alternate I (DEC 2007) of [52.223-16](#).

— (33) [52.223-18](#), Contractor Policy to Ban Text Messaging While Driving (SEP 2010) (E.O. 13513).

— (34) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

— (35)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

— (ii) Alternate I (JAN 2004) of [52.225-3](#).

— (iii) Alternate II (JAN 2004) of [52.225-3](#).

— (36) [52.225-5](#), Trade Agreements (AUG 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (37) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (38) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (39) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (40) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (41) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (42) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

— (43) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

— (44) [52.232-36](#), Payment by Third Party (FEB 2010) ([31 U.S.C. 3332](#)).

— (45) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (46)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

— (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

— (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers “FAST PAY.” When outer shipping containers are not marked “FAST PAY,” the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (JAN 2011)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(vii) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(2) Listed below are additional clauses that apply:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(ii) [52.232-1](#), Payments (APR 1984).

(iii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iv) [52.232-11](#), Extras (APR 1984).

(v) [52.232-25](#), Prompt Payment (OCT 2008).

(vi) [52.233-1](#), Disputes (JULY 2002).

(vii) [52.244-6](#), Subcontracts for Commercial Items (JAN 2011).

(viii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) [52.222-20](#), Walsh-Healey Public Contracts Act (Oct 2010) ([41 U.S.C. 35-45](#)) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)). (Applies to contracts

over \$15,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) [52.222-37](#), Employment Reports on Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)

(vii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(ix) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(x) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(xi) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) (Applies to contracts over \$30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(iv) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the

SMALL BUSINESS PROGRAM REPRESENTATIONS
(JAN 2011)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [insert NAICS code].

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

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

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

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it is, is not a women-owned small business concern.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, 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 representation in paragraph (b)(6)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror 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 representation.

(c) *Definitions.* As used in this provision—

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) “Service-disabled veteran” means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

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

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

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

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

Alternate I (Apr 2002). As prescribed in [19.308\(a\)\(2\)](#), add the following paragraph (b)(7) to the basic provision:

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

- Black American.
- Hispanic American.
- Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- Individual/concern, other than one of the preceding.

52.219-2 Equal Low Bids.

As prescribed in [19.308\(c\)](#), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

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

(End of provision)

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

As prescribed in [19.1309\(a\)](#), insert the following clause:

NOTICE OF TOTAL HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (JAN 2011)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (c).

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

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

(c) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's 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 will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's 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 will be subcontracted to concerns that are not HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in

paragraph (c) of this clause will be performed by the aggregate of the HUBZone small business participants.

(e)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply in connection with construction or service contracts.

(f) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

Alternate I (Jan 2011). As prescribed in [19.1309\(a\)\(1\)](#), substitute the following paragraphs (c)(3) and (c)(4) for paragraphs (c)(3) and (c)(4) of the basic clause:

(c)(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(c)(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

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

As prescribed in [19.1309\(b\)](#), insert the following clause:

NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 2011)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

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

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause [52.219-23](#)). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(4) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraphs (d) and (e) of this clause do not apply if the offeror has waived the evaluation preference.

Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's 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 will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be

incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's 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 will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

Alternate I (Jan 2011). As prescribed in [19.1309\(b\)\(1\)](#), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

52.219-5 [Reserved]

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

As prescribed in [19.508\(c\)](#), insert the following clause:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUNE 2003)

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

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

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in [19.508\(c\)](#), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

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

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

As prescribed in [19.508\(d\)](#), insert the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JUNE 2003)

(a) *Definitions.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *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.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

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

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in [19.508\(d\)](#), add the following paragraph (d) to the basic clause:

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

52.219-8 Utilization of Small Business Concerns.

As prescribed in [19.708\(a\)](#), insert the following clause:

UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business con-

cerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

(End of clause)

52.219-9 Small Business Subcontracting Plan.

As prescribed in [19.708\(b\)](#), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

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

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

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

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

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

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

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

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business,

service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

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

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each sub-

contractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.

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

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror’s planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor’s commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government’s fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled “Utilization Of Small Business Concerns;” or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractor

tors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the *ISR* resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSD*. (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all

contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject *SSRs* in *eSRS*, including *SSRs* submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject *SSRs* for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end *SSR* is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end *SSR*. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

Alternate I (Oct 2001). As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applica-

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

Alternate II (Oct 2001). As prescribed in [19.708\(b\)\(1\)\(ii\)](#), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

Alternate III (July 2010). As prescribed in [19.708\(b\)\(1\)\(iii\)](#), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause;

(d)(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small

disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) *SSR.* (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
																								PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT
<u>52.216-29</u> T&M/LH Proposal Requirements—Non-commercial Item Acquisition with Adequate Price Competition	<u>16.601(e)(1)</u>	P	Yes	L									A											
<u>52.216-30</u> T&M/LH Proposal Requirements—Non-commercial Item Acquisition without Adequate Price Competition	<u>16.601(e)(2)</u>	P	No	L									A											
<u>52.216-31</u> T&M/LH Proposal Requirements—Commercial Item Acquisition	<u>16.601(e)(3)</u>	P	Yes	I									A											
<u>52.217-2</u> Cancellation Under Multiyear Contracts.	<u>17.109(a)</u>	C	Yes	I	A				A															
<u>52.217-3</u> Evaluation Exclusive of Options.	<u>17.208(a)</u>	P	Yes	M	A	A			A				A							A				
<u>52.217-4</u> Evaluation of Options Exercised at Time of Contract Award.	<u>17.208(b)</u>	P	Yes	M	A	A			A				A							A				
<u>52.217-5</u> Evaluation of Options.	<u>17.208(c)</u>	P	Yes	M	A	A			A				A							A				
<u>52.217-6</u> Option for Increased Quantity.	<u>17.208(d)</u>	C	Yes	I	A	A			A				A							A				
<u>52.217-7</u> Option for Increased Quantity—Separately Priced Line Item.	<u>17.208(e)</u>	C	Yes	I	A	A							A							A				
<u>52.217-8</u> Option to Extend Services.	<u>17.208(f)</u>	C	Yes	I					A				A							A				
<u>52.217-9</u> Option to Extend the Term of the Contract.	<u>17.208(g)</u>	C	No	I					A				A							A				
<u>52.219-1</u> Small Business Program Representations.	<u>19.308(a)(1)</u>	P	No	K	A	A			A				A							A	A			
Alternate I	<u>19.308(a)(2)</u>	P	No	K	A	A			A				A							A	A			
<u>52.219-2</u> Equal Low Bids.	<u>19.308(c)</u>	P	No	K	A	A			A				A							A	A			
<u>52.219-3</u> Notice of Total HUBZone Set-Aside or Sole Source Award.✓	<u>19.1309(a)✓</u>	C	Yes	I	A	A			A				A							A	A			
Alternate I	<u>19.1309(a)(1)</u>	C	Yes	I	A	A			A				A							A	A			
<u>52.219-4</u> Notice of Price Evaluation Preference for HUBZone Small Business Concerns.	<u>19.1309(b)✓</u>	C	Yes	I	A	A			A				A							A	A			
Alternate I	<u>19.1309(b)(1)</u>	C	Yes	I	A	A			A				A							A	A			
<u>52.219-6</u> Notice of Total Small Business Set-Aside.	<u>19.508(c)</u>	C	Yes	I	A	A			A				A							A	A			
Alternate I	<u>19.508(c)</u>	C	Yes	I	A	A							A											
Alternate II	<u>19.508(c)</u>	C	Yes	I	A	A							A											
<u>52.219-7</u> Notice of Partial Small Business Set-Aside.	<u>19.508(d)</u>	C	Yes	I	A	A			A				A							A	A			
Alternate I	<u>19.508(d)</u>	C	Yes	I	A	A							A											
Alternate II	<u>19.508(d)</u>	C	Yes	I	A	A							A											
<u>52.219-8</u> Utilization of Small Business Concerns.	<u>19.708(a)</u>	C	Yes	I	A	A			A				A							A	A			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.219-9 Small Business Subcontracting Plan.	19.708(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.708(b)(1)	C	Yes	I	A		A		A					A									A
Alternate II	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate III	19.708(b)(1)(iii)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-10 Incentive Subcontracting Program.	19.708(c)(1)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-11 Special 8(a) Contract Conditions. (See Note 2.)	19.811-3(a)	C	Yes	I																			
52.219-12 Special 8(a) Subcontract Conditions. (See Note 2.)	19.811-3(b)	C	No	I																			
52.219-14 Limitations on Subcontracting. (See Note 2.)	19.508(e) or 19.811-3(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-16 Liquidated Damages—Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-17 Section 8(a) Award. (See Note 2.)	19.811-3(c)	C	No	I																			
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns. (See Note 2.)	19.811-3(d)	C	No	I																			
Alternate I (See Note 2.)	19.811-3(d)(1)	C	No	I																			
Alternate II (See Note 2.)	19.811-3(d)(2)	C	No	I																			
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.	19.1008(a)	P	No	K	A	A			A	A	A	A	A					A					A
52.219-20 Notice of Emerging Small Business Set-Aside.	19.1008(b)	P	No	K																			
52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.	19.1008(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-22 Small Disadvantaged Business Status.	19.308(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.308(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-24 Small Disadvantaged Business Participation Program—Targets.	19.1204(a)	P	Yes	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.	19.1204(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A