

FEDERAL ACQUISITION CIRCULAR

June 30, 1998

FAC 97-06

Federal Acquisition Circular (FAC) 97-06 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.

The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after October 1, 1998.

FAC 97-06 SUMMARY

Federal Acquisition Circular (FAC) 97-06 amends the Federal Acquisition Regulation (FAR) as specified below:

Reform of Affirmative Action in Federal Procurement (FAR Case 97-004A)

This interim rule amends FAR Parts 1, 12, 14, 15, 19, 33, and 52 to establish a mechanism to benefit small disadvantaged business concerns at the prime contract level. This mechanism is a price evaluation adjustment of up to ten percent in certain Standard Industrial Classification (SIC) Major Groups determined by the Department of Commerce. This price evaluation adjustment conforms to the Department of Justice proposal to reform affirmative action in Federal procurement and to regulations issued by the Small Business Administration regarding small disadvantaged business programs. This price evaluation adjustment is mandatory for those competitive procurements to which it applies. It does not, however, apply to several major categories of acquisition, including, for example, acquisitions within the simplified acquisition threshold, acquisitions set aside for small business, and acquisitions conducted pursuant to the 8(a) program.

Replacement pages: Structure iii and iv; 1-5 thru 1-8; 12-3 thru 12-6; 14-1 and 14-2; 14-9 and 14-10; 14-21 and 14-22; 15-33 and 15-34; 19-1 thru 19-6; 19-25 thru 19-32.3; 19-49 and 19-50; 33-1 and 33-2; 52-3 and 52-4; 52-37 thru 52-44.2; 52-95 and 52-96; 52-103 thru 52-104.2; Matrix 7 and 8; and Matrix 17 thru 19.

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30.6	9000-0129	52.214-15	9000-0044
31.205-46	9000-0079	52.214-16	9000-0044
31.205-46(a)(3)	9000-0088	52.214-17	9000-0018
32	9000-0035	52.214-21	9000-0039
32.000	9000-0138	52.214-26	9000-0034
32.1	9000-0070 and 9000-0138	52.214-28	9000-0013
32.2	9000-0138	52.215-2	9000-0034
32.4	9000-0073	52.215-1(c)(2)(iv)	9000-0048
32.5	9000-0010 and 9000-0138	52.215-1(d)	9000-0044
32.7	9000-0074	52.215-4	9000-0046
32.9	9000-0102	52.215-6	9000-0047
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33	9000-0035	52.215-12	9000-0013
34.1	9000-0133	52.215-13	9000-0013
36.213-2	9000-0037	52.215-14	9000-0080
36.603	9000-0004 and 9000-0005	52.215-19	9000-0015
36.701	9000-0037	52.215-20	9000-0013
41.004-2(c)	9000-0125	52.215-21	9000-0013
42.205(f)	9000-0026	52.216-2	9000-0068
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45	9000-0075	52.216-7	9000-0069
46	9000-0077	52.216-10	9000-0067
47	9000-0061	52.216-13	9000-0069
48	9000-0027	52.216-15	9000-0069
49	9000-0028	52.216-16	9000-0067
50	9000-0029	52.216-17	9000-0067
51.1	9000-0031	52.219-9	9000-0006
51.2	9000-0032	52.219-10	9000-0006
52.203-2	9000-0018	52.219-19	9000-0100
52.203-7	9000-0091	52.219-20	9000-0100
52.204-3	9000-0097	52.219-21	9000-0100
52.204-6	9000-0145	52.219-22	9000-0150
52.207-3	9000-0114	52.219-23	9000-0150
52.208-8	9000-0113	52.222-2	9000-0065
52.208-9	9000-0113	52.222-4	1215-0119
52.209-1(b)	9000-0020	52.222-6	1215-0140
52.209-1(c)	9000-0083	52.222-8	1215-0149 and
52.209-5	9000-0094		1215-0017
52.209-6	9000-0094	52.222-11	9000-0014
52.210-8	9000-0018	52.222-18	9000-0127
52.210-9	9000-0016	52.222-21	1215-0072
52.210-10	9000-0017	52.222-22	1215-0072
52.211-5	9000-0030	52.222-23	1215-0072
52.212-1	9000-0043	52.222-25	1215-0072
52.212-2	9000-0043	52.222-26	1215-0072
52.214-2	9000-0046	52.222-27	1215-0072
52.214-14	9000-0047	52.222-35	1215-0072
		52.222-36	1215-0072
		52.222-41	1215-0017 and
			1215-0150

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.222-46	9000-0066	52.243-4	9000-0026
52.223-1	9000-0021	52.243-6	9000-0026
52.223-4	9000-0134	52.243-7	9000-0026
52.223-5	9000-0147	52.245-2	9000-0075
52.223-6(b)(5)	9000-0101	52.245-3	9000-0075
52.223-7	9000-0107	52.245-5	9000-0075
52.223-8	9000-0134	52.245-7	9000-0075
52.225-1	9000-0024	52.245-8	9000-0075
52.225-6	9000-0023	52.245-9	9000-0075
52.225-8	9000-0025	52.245-10	9000-0075
52.225-10	9000-0022	52.245-11	9000-0075
52.225-20	9000-0130	52.245-16	9000-0075
52.228-1	9000-0045	52.245-17	9000-0075
52.228-2	9000-0045 and 9000-0119	52.245-18	9000-0075
52.228-13	9000-0045	52.246-2	9000-0077
52.228-15	9000-0045	52.246-3	9000-0077
52.228-16	9000-0045 and 9000-0119	52.246-4	9000-0077
52.229-2	9000-0059	52.246-5	9000-0077
52.230-6	9000-0129	52.246-6	9000-0077
52.232-5	9000-0070	52.246-7	9000-0077
52.232-7	9000-0070	52.246-8	9000-0077
52.232-10	9000-0070	52.246-10	9000-0077
52.232-12	9000-0073	52.246-12	9000-0077
52.232-13	9000-0010	52.246-15	9000-0077
52.232-14	9000-0010	52.247-2	9000-0053
52.232-15	9000-0010	52.247-29	9000-0061
52.232-16	9000-0010	52.247-30	9000-0061
52.232-20	9000-0074	52.247-31	9000-0061
52.232-21	9000-0074	52.247-32	9000-0061
52.232-22	9000-0074	52.247-33	9000-0061
52.232-27	9000-0102	52.247-34	9000-0061
52.232-29	9000-0138	52.247-35	9000-0061
52.232-30	9000-0138	52.247-36	9000-0061
52.232-31	9000-0138	52.247-37	9000-0061
52.232-32	9000-0138	52.247-38	9000-0061
52.233-1	9000-0035	52.247-39	9000-0061
52.234-1	9000-0133	52.247-40	9000-0061
52.236-5	9000-0062	52.247-41	9000-0061
52.236-13	1220-0029 and 9000-0060	52.247-42	9000-0061
52.236-15	9000-0058	52.247-43	9000-0061
52.236-19	9000-0064	52.247-44	9000-0061
52.241-2	9000-0122	52.247-51	9000-0057
52.241-6	9000-0123	52.247-53	9000-0055
52.241-11	9000-0126	52.247-57	9000-0061
52.241-13	9000-0124	52.247-63	9000-0054
52.242-12	9000-0056	52.247-64	9000-0054
52.243-1	9000-0026	52.248-1	9000-0027
52.243-2	9000-0026	52.248-2	9000-0027
52.243-3	9000-0026	52.248-3	9000-0027
		52.249-2	9000-0028
		52.249-3	9000-0028
		52.249-5	9000-0028

FAR segment	OMB Control Number
52.249-6	9000-0028
52.249-11	9000-0028
52.250-1	9000-0029
52.253-1	9000-0104
53.105	9000-0104
53.236-1(a)	9000-0037
SF 24	9000-0045
SF 25	9000-0045
SF 25-A	9000-0045
SF 28	9000-0001
SF 34	9000-0045
SF 35	9000-0045
SF 129	9000-0002
SF 254	9000-0004
SF 255	9000-0005
SF 273	9000-0045
SF 274	9000-0045
SF 275	9000-0045
SF 294	9000-0006
SF 295	9000-0007
SF 1403	9000-0011
SF 1404	9000-0011
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SF 1406	9000-0011
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SF 1416	9000-0045
SF 1417	9000-0037
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SF 1438	9000-0012
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SF 1440	9000-0012
SF 1443	9000-0010
SF 1444	9000-0089
SF 1445	9000-0089
SF 1446	9000-0089
SF 1449	9000-0136

1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

Subpart 1.2—Administration**1.201 Maintenance of the FAR.****1.201-1 The two councils.**

(a) Subject to the authorities discussed in 1.102, revisions to the FAR will be prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulatory Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). Members of these councils shall—

(1) Represent their agencies on a full-time basis;

(2) Be selected for their superior qualifications in terms of acquisition experience and demonstrated professional expertise; and

(3) Be funded by their respective agencies.

(b) The chairperson of the CAA Council shall be the representative of the Administrator of General Services. The other members of this council shall be one each representative from the—

(1) Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, Labor, State, Transportation, and Treasury; and

(2) Environmental Protection Agency, Social Security Administration, Small Business Administration, and Department of Veterans Affairs.

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense. Membership shall include representatives of the military Departments, the Defense Logistics Agency, and the National Aeronautics and Space Administration.

(d) Responsibility for processing revisions to the FAR is apportioned by the two councils so that each council has cognizance over specified parts or subparts.

(e) Each council shall be responsible for—

(1) Agreeing on all revisions with the other council;

(2) Submitting to the FAR Secretariat (see 1.201-2) the information required under paragraphs 1.501-2(b) and

(e) for publication in the *Federal Register* of a notice soliciting comments on a proposed revision to the FAR;

(3) Considering all comments received in response to notice of proposed revisions;

(4) Arranging for public meetings;

(5) Preparing any final revision in the appropriate FAR format and language; and

(6) Submitting any final revision to the FAR Secretariat for publication in the *Federal Register* and printing for distribution.

1.201-2 FAR Secretariat.

(a) The General Services Administration is responsible for establishing and operating the FAR Secretariat to print, publish, and distribute the FAR through the *Code of Federal Regulations* system (including a loose-leaf edition with periodic updates).

(b) Additionally, the FAR Secretariat shall provide the two councils with centralized services for—

(1) Keeping a synopsis of current FAR cases and their status;

(2) Maintaining official files;

(3) Assisting parties interested in reviewing the files on completed cases; and

(4) Performing miscellaneous administrative tasks pertaining to the maintenance of the FAR.

1.202 Agency compliance with the FAR.

Agency compliance with the FAR (see 1.304) is the responsibility of the Secretary of Defense (for the military departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities).

Subpart 1.3—Agency Acquisition Regulations

1.301 Policy.

(a)(1) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors.

(2) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).

(b) Agency heads shall establish procedures to ensure that agency acquisition regulations are published for comment in the *Federal Register* in conformance with the procedures in Subpart 1.5 and as required by section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and other applicable statutes, when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. However, publication is not required for issuances that merely implement or supplement higher level issuances that have previously undergone the public comment process, unless such implementation or supplementation results in an additional significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. Issuances under 1.301(a)(2) need not be publicized for public comment.

(c) When adopting acquisition regulations, agencies shall ensure that they comply with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) as implemented in 5 CFR 1320 (see 1.106) and the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Normally, when a law requires publication of a proposed regulation, the Regulatory Flexibility Act applies and agencies must prepare written analyses, or certifications as provided in the law.

(d) Agency acquisition regulations implementing or supplementing the FAR are, for—

(1) The military departments and defense agencies, issued subject to the authority of the Secretary of Defense;

(2) NASA activities, issued subject to the authorities of the Administrator of NASA; and

(3) The civilian agencies other than NASA, issued by the heads of those agencies subject to the overall authority of the Administrator of General Services or independent authority the agency may have.

1.302 Limitations.

Agency acquisition regulations shall be limited to—

(a) Those necessary to implement FAR policies and procedures within the agency; and

(b) Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

1.303 Publication and codification.

(a) Agency-wide acquisition regulations shall be published in the *Federal Register* as required by law, shall be codified under an assigned chapter in Title 48, *Code of Federal Regulations*, and shall parallel the FAR in format, arrangement, and numbering system (but see 1.105-1(c)). Coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the

economic price adjustment. Use of any other contract type to acquire commercial items is prohibited.

12.208 Contract quality assurance.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

12.209 Determination of price reasonableness when contracting by negotiation.

When contracting by negotiation for commercial items, the policies and procedures in Subpart 15.4 shall be used to establish the reasonableness of prices.

12.210 Contract financing.

Customary market practice for some commercial items may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in Part 32.

12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see Part 27 or agency FAR supplements).

12.212 Computer software.

(a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract.

12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See 30.201-1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in 30.201.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Public Law 103-355 (41 U.S.C. 264, note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items—

12.302

sition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at 52.212-1, Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, SF 1449). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.302;

(2) *The provision at 52.212-3, Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4. Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a);

(3) *The clause at 52.212-4, Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27a, SF 1449). The contracting officer may tailor this clause in accordance with 12.302; and

(4) *The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212-5(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to Part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items (see 12.602); or

(2) Include a similar provision containing all evaluation factors required by 13.106, Subpart 14.2 or Subpart 15.3, as an addendum (see 12.302(d)).

(d) *Use of required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applica-

bility of statutes and executive orders to the acquisition of commercial items.

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in 12.302. For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.505 may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. If the provision at 52.212-2 is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in Part 23 regarding the use of recovered material when appropriate for the item being acquired.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212-1, Instructions to Offerors—Commercial Items, and the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring 52.212-4, Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in Subpart 32.11);
- (4) Invoice;
- (5) Other compliances; and

(6) Compliance with laws unique to Government contracts.

(c) Tailoring inconsistent with customary commercial practice. The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the SF 1449 if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the SF 1449; any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this Part 12 shall be assembled, to the maximum extent practicable, using the following format:

- (a) Standard Form (SF) 1449;
- (b) Continuation of any block from SF 1449, such as—
 - (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), or if set aside for emerging small businesses;
 - (2) Block 18B for remittance address;
 - (3) Block 19 for contract line item numbers;
 - (4) Block 20 for schedule of supplies/services; or
 - (5) Block 25 for accounting data;
- (c) Contract clauses—
 - (1) 52.212-4, Contract Terms and Conditions—Commercial Items, by reference (see SF 1449 block 27a);
 - (2) Any addendum to 52.212-4; and
 - (3) 52.212-5, Contract Terms and Conditions Required to Implement Statutes and Executive orders;
- (d) Any contract documents, exhibits or attachments; and
- (e) Solicitation provisions—
 - (1) 52.212-1, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 27a);
 - (2) Any addendum to 52.212-1;

(3) 52.212-2, Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and

(4) 52.212-3, Offeror Representations and Certifications—Commercial Items.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.

This subpart provides—

(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in 52.212-4 differ substantially from those contained elsewhere in the FAR.

12.402 Acceptance.

(a) The acceptance paragraph in 52.212-4 is based upon the assumption that the Government will rely on the contractor’s assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government’s available postaward remedies (see 12.404).

(c) The acquisition of commercial items under other circumstances such as on an “as is” basis may also require acceptance procedures different from those contained in 52.212-4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

12.403 Termination.

(a) *General.* The clause at 52.212-4 permits the Government to terminate a contract for commercial items

either for the convenience of the Government or for cause. However, the paragraphs in 52.212-4 entitled “Termination for the Government’s Convenience” and “Termination for Cause” contain concepts which differ from those contained in the termination clauses prescribed in Part 49. Consequently, the requirements of Part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures in this section. Contracting officers may continue to use Part 49 as guidance to the extent that Part 49 does not conflict with this section and the language of the termination paragraphs in 52.212-4.

(b) *Policy.* The contracting officer should exercise the Government’s right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause.* (1) The paragraph in 52.212-4 entitled “Excusable Delay” requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government’s rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government’s preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess procurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—

(i) Indicate the contract is terminated for cause;
(ii) Specify the reasons for the termination;
(iii) Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see 33.211).

(d) *Termination for the Government’s convenience.* (1) When the contracting officer terminates a contract for commercial items for the Government’s convenience, the contractor shall be paid—

(i) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination, and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in Part 31. The Government does not have any right to audit the contractor’s records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government’s need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

12.404 Warranties.

(a) *Implied warranties.* The Government’s post award rights contained in 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when—

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor’s skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties.* The Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 264 note) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government’s intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if—

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PART 14—SEALED BIDDING

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14.000 Scope of part.

This part prescribes—

- (a) The basic requirements of contracting for supplies and services (including construction) by sealed bidding;
- (b) The information to be included in the solicitation (invitation for bids);
- (c) Procedures concerning the submission of bids;
- (d) Requirements for opening and evaluating bids and awarding contracts; and
- (e) Procedures for two-step sealed bidding.

Subpart 14.1—Use of Sealed Bidding

14.101 Elements of sealed bidding.

Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

- (a) *Preparation of invitations for bids.* Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.
- (b) *Publicizing the invitation for bids.* Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must occur a sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.
- (c) *Submission of bids.* Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.
- (d) *Evaluation of bids.* Bids shall be evaluated without discussions.
- (e) *Contract award.* After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

14.102 [Reserved]

14.103 Policy.

14.103-1 General.

- (a) Sealed bidding shall be used whenever the conditions in 6.401(a) are met. This requirement applies to any proposed contract action under Part 6.
- (b) Current lists of bidders shall be maintained in accordance with 14.205.
- (c) Sealed bidding may be used for classified acquisitions (see 4.401) if its use does not violate agency security requirements.

- (d) The policy for pricing modifications of sealed bid contract appears in 15.403-4(a)(1)(iii).

14.103-2 Limitations.

- No awards shall be made as a result of sealed bidding unless—
 - (a) Bids have been solicited as required by Subpart 14.2;
 - (b) Bids have been submitted as required by Subpart 14.3;
 - (c) The requirements of 1.602-1(b) and Part 6 have been met; and
 - (d) An award is made to the responsible bidder (see 9.1) whose bid is responsive to the terms of the invitation for bids and is most advantageous to the Government, considering only price and the price related factors included in the invitation, as provided in Subpart 14.4.

14.104 Types of contracts.

Firm-fixed-price contracts shall be used when the method of contracting is sealed bidding, except that fixed-price contracts with economic price adjustment clauses may be used if authorized in accordance with 16.203 when some flexibility is necessary and feasible. Such clauses must afford all bidders an equal opportunity to bid.

14.105 Solicitations for informational or planning purposes.

(See 15.201(e).)

Subpart 14.2—Solicitation of Bids

14.201 Preparation of invitations for bids.

14.201-1 Uniform contract format.

- (a) Contracting officers shall prepare invitations for bids and contracts using the uniform contract format outlined in Table 14-1 to the maximum practicable extent. The use of the format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by bidders and contractors. It need not be used for acquisition of the following:
 - (1) Construction (see Part 36).
 - (2) Shipbuilding (including design, construction, and conversion), ship overhaul, and ship repair.
 - (3) Subsistence items.
 - (4) Supplies or services requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format.
 - (5) Firm-fixed-price or fixed-price with economic price adjustment acquisitions that use the simplified contract format (see 14.201-9).
- (b) Information suitable for inclusion in invitations for bids under the uniform contract format shall also be

14.203-2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsis in the Commerce Business Daily are set forth in 5.101 and 5.2.

(b) For procedures that apply to publishing notices in the Commerce Business Daily to determine whether commercial sources are available, as prescribed by OMB Circular A-76, see 5.205(d) and 7.303(b).

14.203-3 Master solicitation.

(a) *Definition.* “Master solicitation,” as used in this subsection, means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

(b) *Use.* The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations shall reference the date of the current master solicitation and any changes thereto. Copies of the master solicitation shall be made available on request. Cognizant contract administration activities shall be provided a current copy of the master solicitation.

14.204 Records of invitations for bids and records of bids.

(a) Each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting officers shall review and utilize the information available in connection with subsequent acquisitions of the same or similar items.

(b) The file for each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

14.205 Solicitation mailing lists.**14.205-1 Establishment of lists.**

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when—

(1) the requirements of the contracting office can be obtained through use of simplified acquisition procedures (see Part 13);

(2) the requirements are nonrecurring; or

(3) electronic commerce methods are used which transmit solicitations or presolicitation notices automati-

cally to all interested sources participating in electronic contracting with the purchasing activity. Lists may be established as a central list for use by all contracting offices within the contracting activity, or as local lists maintained by each contracting office.

(b) All eligible and qualified concerns that have submitted solicitation mailing list applications, or that the contracting office considers capable of filling the requirements of a particular acquisition, shall be placed on the appropriate solicitation mailing list. (See also 5.403(b).) Planned producers under the Industrial Preparedness Planning Program shall be included on lists for their planned items. Prospective bidders shall be notified that they have been added to solicitation mailing lists in accordance with agency procedures. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Applicants shall be notified if they do not meet the criteria for placement on the list.

(c) The names of prospective bidders who are furnished invitations in response to their requests shall be added to the list of those initially mailed copies of a particular solicitation, so that they will be furnished copies of any solicitation amendments, etc. However, when it is known that the request was made by a person or an organization that is known not to be a prospective bidder, no entry shall be made on the list.

(d)(1) Standard Form 129, Solicitation Mailing List Application, shall be used for obtaining information needed to establish and maintain lists. Supplemental information, where required, may be obtained as specified in agency implementing regulations.

(2) The application shall be submitted and signed by the supplier, as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive solicitations.

(3) In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, acquired by the contracting activity maintaining the list, which are considered applicable to the supplier’s type of business.

(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged and women-owned business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern.

14.205-2**14.205-2 Removal of names from solicitation mailing lists.**

(a) The name of each concern failing to either (1) submit a bid, (2) respond to a presolicitation notice (see 14.205-4(c)), or (3) otherwise respond to an invitation for bids may be removed from the solicitation mailing list without notice to the concern. However, the removal shall be limited to the items involved in the invitation or notice. When a concern fails to respond to two consecutive invitations or presolicitation notices, its name shall be removed from the list to the extent indicated in this paragraph. However, in individual cases, concerns failing to respond may be retained on a list if retention is in the best interest of the Government. Both actual bids and written requests for retention on the lists shall be deemed to be "responses" to invitations for bids or presolicitation notices. If this procedure results in limited solicitation mailing lists, the contracting officer should request an explanation from the concerns that did not respond.

(b) Concerns that have been debarred from Government contracts or otherwise determined to be ineligible to receive an award shall be removed from solicitation mailing lists to the extent required by the debarment, suspension, or other determination of ineligibility.

14.205-3 Reinstatement on solicitation mailing lists.

Concerns that have been removed from solicitation mailing lists may be reinstated (a) upon written request, (b) by filing a new application on Standard Form 129, or (c) by the submission of a bid. Debarred or suspended firms shall not be reinstated during the period of a debarment or suspension.

14.205-4 Excessively long solicitation mailing lists.

(a) *General.* Solicitation mailing lists should be used to promote competition commensurate with the dollar value of the proposed contract. As much of the solicitation mailing list shall be used as is compatible with efficiency and economy in securing competition. Where the number of bidders on a mailing list is excessive in relation to a specific acquisition, the list may be reduced consistent with this paragraph and paragraphs (b) and (c) of this subsection. Nonetheless, solicitations should be furnished to others upon request, in accordance with 5.102. Also, bids shall not be disregarded merely because the bidder was not formally invited to bid.

(b) *Rotation of lists.* By using different portions of a list for separate acquisitions, solicitation mailing lists may be rotated. However, considerable judgment must be exercised in determining whether the size of the acquisition justifies the rotation. The use of a presolicitation notice (see paragraph (c) of this subsection), time permitting, also should be considered. In rotating a list, the interests of small, small disadvantaged, and women-owned small businesses (see

19.202-4) shall be considered. Whenever a list is rotated, bids shall be solicited from (1) the previously successful bidder, (2) prospective suppliers who have been added to the solicitation mailing list since the last solicitation, and (3) concerns on the segment of the list selected for use in a particular acquisition. However, the rule does not apply when such action would be precluded by use of a total set-aside (see Part 19).

(c) *Presolicitation notices.* In lieu of initially forwarding complete bid sets, the contracting officer may send presolicitation notices to concerns on the solicitation mailing list. The notice shall (1) specify the final date for receipt of requests for a complete bid set, (2) briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation, and (3) notify concerns that, if no bid is to be submitted, they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved. Drawings, plans, and specifications normally will not be furnished with the presolicitation notice. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets shall be sent to concerns that request them in response to the notice. This procedure is particularly suitable when invitations for bids and solicitation mailing lists are lengthy.

14.205-5 Release of solicitation mailing lists.

(a) Contracting activities shall make the central and local solicitation mailing lists established under this part available to the public in response to written requests made in accordance with agency regulations implementing Subpart 24.2.

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, bidders, and others having a bona fide interest will be supplied upon request with a list of all prospective bidders furnished copies of the plans and specifications. Contracting offices may require written requests and establish appropriate procedures.

14.206 Small business set-asides and price evaluation adjustments for small disadvantaged business concerns.

(See Part 19.)

14.207 Pre-bid conference.

A pre-bid conference may be used, generally in a complex acquisition, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It shall never be used as a substitute for amending a defective or ambiguous invi-

14.408-4 Economic price adjustment.

(a) *Bidder proposes economic price adjustment.* (1) When a solicitation does not contain an economic price adjustment clause but a bidder proposes one with a ceiling that the price will not exceed, the bid shall be evaluated on the basis of the maximum possible economic price adjustment of the quoted base price.

(2) If the bid is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause (see 16.203) that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award may be made on the basis of the bid as originally submitted.

(3) Bids that contain economic price adjustments with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) *Government proposes economic price adjustment.* (1) When an invitation contains an economic price adjustment clause and no bidder takes exception to the provisions, bids shall be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added.

(2) When a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation or limits the downward economic price adjustment provisions of the invitation, the bid shall be rejected as nonresponsive.

(3) When a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as non-responsive since the downward economic price adjustment provisions are thereby limited.

(4) When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

14.408-5 [Reserved]**14.408-6 Equal low bids.**

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Small business concerns that are also labor surplus area concerns.

(2) Other small business concerns.

(3) Other business concerns.

(b) If two or more bidders still remain equally eligible after application of paragraph (a) of this section, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the

names and addresses of the witnesses and the person supervising the drawing.

(c) When an award is to be made by using the priorities under this 14.408-6, the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

14.408-7 Documentation of award.

(a) The contracting officer shall document compliance with 14.103-2 in the contract file.

(b) The documentation shall either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award.

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

14.408-8 Protests against award.

(See Subpart 33.1, Protests.)

14.409 Information to bidders.**14.409-1 Award of unclassified contracts.**

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify each unsuccessful bidder in writing or electronically within three days after contract award, that its bid was not accepted. “Day,” for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday;

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall include in notices given unsuccessful bidders from designated or NAFTA countries—

(i) The dollar amount of the successful bid; and

(ii) The name and address of the successful bidder.

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. In such circumstances, only information concerning location of the abstract of offers need be given.

(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(d) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

14.409-2 Award of classified contracts.

In addition to 14.409-1, if classified information was furnished or created in connection with the solicitation, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. Information regarding a classified award shall not be furnished by telephone.

Subpart 14.5—Two-Step Sealed Bidding

14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Subparts 14.3 and 14.4.

14.502 Conditions for use.

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) Sufficient time will be available for use of the two-step method.

(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multi-year contracting.

(2) Government-owned facilities or special tooling to be made available to the successful bidder.

(3) A total small business set-aside (see 19.502-2).

(4) The use of the price evaluation adjustment for small disadvantaged business concerns (see Subpart 19.11).

(5) A first or subsequent production quantity is being acquired under a performance specification.

14.503 Procedures.

14.503-1 Step one.

(a) Requests for technical proposals shall be distributed in accordance with 14.203-1. In addition, the request shall be synopsisized in accordance with Part 5. The request must include, as a minimum, the following:

(1) A description of the supplies or services required.

(2) A statement of intent to use the two-step method.

(3) The requirements of the technical proposal.

(4) The evaluation criteria, to include all factors and any significant subfactors.

(5) A statement that the technical proposals shall not include prices or pricing information.

(6) The date, or date and hour, by which the proposal must be received (see 14.201-6(r)).

(7) A statement that—

(i) In the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and

(ii) Each bid in the second step must be based on the bidder's own technical proposals.

(8) A statement that—

(i) Offerors should submit proposals that are acceptable without additional explanation or information,

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PART 15—CONTRACTING BY NEGOTIATION

Table 15-2

- (4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).
- (5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.
- (6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.
- (7) Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

C. Price Revision/Redetermination.

CUTOFF DATE	NUMBER OF UNITS COMPLETED	NUMBER OF UNITS TO BE COMPLETED	CONTRACT AMOUNT	REDETERMINATION PROPOSAL AMOUNT	DIFFERENCE
(1)	(2)	(3)	(4)	(5)	(6)

COST ELEMENTS	INCURRED COST—PREPRODUCTION	INCURRED COST—COMPLETED UNITS	INCURRED COST—WORK IN PROCESS	TOTAL INCURRED COST	ESTIMATED COST TO COMPLETE	ESTIMATED TOTAL COST	REFERENCE
(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

(Use as applicable)

Column

Instruction

- (1) Enter the cutoff date required by the contract, if applicable.
- (2) Enter the number of units completed during the period for which experienced costs of production are being submitted.
- (3) Enter the number of units remaining to be completed under the contract.
- (4) Enter the cumulative contract amount.
- (5) Enter your redetermination proposal amount.
- (6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).
- (7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.
- (8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.*, included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.

- (9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.
- (10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.
- (11) Enter total incurred costs (Total of Columns (8), (9), and (10)).
- (12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.
- (13) Enter total estimated cost (Total of Columns (11) and (12)).
- (14) Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.501 Definition.

“Day,” as used in this subpart, has the meaning set forth at 33.101.

15.502 Applicability.

This subpart applies to competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). The procedures in 15.504, 15.506, 15.507, 15.508, and 15.509, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d)(1) and (2).

15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business programs.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see Subpart 19.5), or when a small disadvantaged business concern receives a benefit based on its disadvantaged status (see Subpart 19.11) and is the apparently successful offeror, upon completion of negotiations and determinations of responsibility, and completion of the process in 19.304(d), if necessary, but prior to award, the contracting officer shall notify each offeror in writing of the name and address of the apparently successful offeror. The notice shall also state that the Government will not consider subsequent revisions of the offeror’s proposal; and no response is

required unless a basis exists to challenge the disadvantaged status and/or small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805-2).

(b) *Postaward notices.* (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

- (i) The number of offerors solicited;
- (ii) The number of proposals received;
- (iii) The name and address of each offeror receiving an award;
- (iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in Part 13.

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 concerns;
- (4) The certificate of competency program;
- (5) The subcontracting assistance program;
- (6) The “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; and
- (8) The use of a price evaluation adjustment for small disadvantaged business concerns.

(b) This part, except for Subpart 19.6, applies only inside the United States, its territories and possessions, Puerto

Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. Subpart 19.6 applies worldwide.

19.001 Definitions.

“Concern,” as used in this part, 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 and which 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) any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States, shall be included.

“Fair market price,” as used in this part, means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.202-6).

“Industry,” as used in this part, means all concerns primarily engaged in similar lines of activity, as listed and described in the Standard Industrial Classification (SIC) Manual.

“Labor surplus area” means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

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

“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).

“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 and size standards in 13 CFR Part 121 (see 19.102). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or con-

trol of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

“Small disadvantaged business concern”, as used in this part, means—

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

(1) “Socially disadvantaged individuals” means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

(2) “Economically disadvantaged individuals” means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Individuals who represent that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) are to be considered socially and economically disadvantaged.

(i) “Subcontinent Asian Americans” means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.

(ii) “Asian Pacific Americans” means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, the Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru.

(iii) “Native Americans” means American Indians, Eskimos, Aleuts, and Native Hawaiians.

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

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

(b) For prime contractors, (except for 52.212-3(c)(2) and 52.219-1(b)(2) for general statistical purposes and 52.212-3(c)(7)(ii), 52.219-22(b)(2), and 52.219-23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns) an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification from the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B, and

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

(ii) Where the concern is owned by one or more disadvantaged 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

(iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

(2) It has 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. In this case, a contractor must receive certification as an SDB by the SBA prior to contract award.

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

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

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

Subpart 19.1—Size Standards

19.101 Explanation of terms.

“Affiliates.” As used in this subpart, 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 inside the United States.

(a) *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.

(b) *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.

(c) *Control through stock ownership.* (1) 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.

(2) 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.

(3) 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.

(d) *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.

(e) *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.

(f) *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.

(1) *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.

(2) *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.

(3) *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, principal 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.

(g) *Control through contractual relationships—(1) Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting 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.

(2) *Joint venture—procurement and property sale assistance*—Concerns bidding on a particular procurement or property sale 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.

(3) 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).

(4) *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.

“Annual receipts.” (a) 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.

(1) 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.

(2) 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.

(b) 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 (a) of this section, 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 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 Standard

Industrial Classification (SIC) Manual, 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 which submits a bid or 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 deemed to be a small business when it has no more than 500 employees, and—

(1) Except as provided in subparagraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, such nonmanufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term “nonmanufacturer” includes a concern which can manufacture or produce the product referred to in the specific acquisition but does not do so in connection with that acquisition. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being acquired is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. However, see the limitations on subcontracting at 52.219-14 which 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 nonmanufacturer 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 in the SBA’s Procurement Automated Source System (PASS), and on SBA’s Internet Homepage at <http://www.sbaonline.sba.gov/GConmanuf.html>. 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 where the procurement of a manufactured item processed under the procedures set forth in Part 13 is set aside for small business and where the anticipated cost of the procurement will not exceed \$25,000. In those procurements, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States.

(g) The industry size standards are set forth in the following table. The table column labeled “SIC” follows the standard industrial classification code as published by the Government in the Standard Industrial Classification Manual. The Manual is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. The number of employees or annual receipts indicates the maximum allowed for a concern, including its affiliates, to be considered small.

vide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

12 SIC code 8744: (1) If one of the activities of base maintenance, as defined below, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) "Base Maintenance" requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as "Base Maintenance."

13 SIC code 8744: (1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of

activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Subpart 19.2—Policies

19.201 General policy.

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

(b) The Department of Commerce will determine on an annual basis, by Major Groups as contained in the Standard Industrial Classification (SIC) manual, and region, if any, the authorized small disadvantaged business (SDB) procurement mechanisms and applicable factors (percentages). The Department of Commerce determination shall only affect solicitations that are issued on or after the effective date of the determination. The effective date of the Department of Commerce determination shall be no less than 60 days after its publication date. The Department of Commerce determination shall not affect ongoing acquisitions. The Department of Commerce determination shall include the applicable factors, by SIC Major Group, to be used in the price evaluation adjustment for SDB concerns (see 19.1104). The authorized procurement mechanisms shall be applied consistently with the policies and procedures in this subpart. The agencies shall apply the SDB procurement mechanisms determined by the Department of Commerce. The Department of Commerce, in making its determination, is not limited to the price evaluation adjustment for SDB concerns where the Department of

Commerce has found substantial and persuasive evidence of—

(1) A persistent and significant underutilization of minority firms in a particular industry, attributable to past or present discrimination; and

(2) A demonstrated incapacity to alleviate the problem by using those mechanisms.

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

(d) The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (see section (k) of the Small Business Act). Management of the office shall be the responsibility of an officer or employee of the agency who shall, in carrying out the purposes of the Act—

(1) Be known as the Director of Small and Disadvantaged Business Utilization;

(2) Be appointed by the agency head;

(3) Be responsible to and report directly to the agency head or the deputy to the agency head;

(4) Be responsible for the agency carrying out the functions and duties in sections 8 and 15 of the Small Business Act;

(5) Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(6) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8 and 15 of the Small Business Act;

(7) Assign a small business technical advisor to each contracting activity within the agency to which the SBA has assigned a representative (see 19.402)—

(i) Who shall be a full-time employee of the contracting activity, well qualified, technically trained, and familiar with the supplies or services contracted for by the activity; and

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8 and 15 of the Small Business Act;

(8) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8 and 15 of the Small Business Act;

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

(e) Small Business Specialists shall be appointed and act in accordance with agency regulations.

(f)(1) Each agency shall designate, at levels it determines appropriate, personnel responsible for determining whether, in order to achieve the contracting agency's goal for SDB concerns, the use of the SDB mechanism in Subpart 19.11 has resulted in an undue burden on non-SDB firms in one of the major industry groups and regions identified by Department of Commerce following paragraph (b) of this section, or is otherwise inappropriate. Determinations under this subpart are for the purpose of determining future acquisitions and shall not affect ongoing acquisitions. Requests for a determination, including supporting rationale, may be submitted to the agency designee. If the agency designee makes an affirmative determination that the SDB mechanism has an undue burden or is otherwise inappropriate, the determination shall be forwarded through agency channels to the OFPP, which shall review the determination in consultation with the Department of Commerce and the Small Business Administration. At a minimum, the following information should be included in any submittal:

(i) A determination of undue burden or other inappropriate effect, including proposed corrective action.

(ii) The SIC Major Group affected.

(iii) Supporting information to justify the determination, including, but not limited to, dollars and percentages of contracts awarded by the contracting activity under the affected SIC Major Group for the previous two fiscal years and current fiscal year to date for—

(A) Total awards;

(B) Total awards to SDB concerns;

(C) Awards to SDB concerns awarded contracts under the SDB price evaluation adjustment where the SDB concerns would not otherwise have been the successful offeror;

(D) Number of successful and unsuccessful SDB offerors; and

(E) Number of successful and unsuccessful non-SDB offerors.

(iv) A discussion of the pertinent findings, including any peculiarities related to the industry, regions or demographics.

(v) A discussion of other efforts the agency has undertaken to ensure equal opportunity for SDBs in contracting with the agency.

(2) After consultation with OFPP, or if the agency does not receive a response from OFPP within 90 days after notice is provided to OFPP, the contracting agency may limit the use of the SDB mechanism in Subpart 19.11 until the Department of Commerce determines the updated price evaluation adjustment, as required by this section. This limitation shall not apply to solicitations that already have been synopsized.

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subpart 19.5 or 19.8. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.

19.202-1 Encouraging small business participation in acquisitions.

Small business concerns shall be afforded an equitable opportunity to compete for all contracts that they can perform to the extent consistent with the Government's interest. When applicable, the contracting officer shall take the following actions:

(a) Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.

(b) Plan acquisitions such that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by SBA against loss under 15 U.S.C. 694b.

(c) Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.

(d) Encourage prime contractors to subcontract with small business concerns (see Subpart 19.7).

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative at least 30 days prior to the issuance of the solicitation if—

(i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it unlikely that small businesses can compete for the prime contract, or

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

(2) The contracting officer shall also provide a statement explaining why the—

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

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

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

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

(3) The 30-day notification process shall occur concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA procurement center representative's recommendation, made in accordance with 19.402(c)(2), the contracting officer shall document the basis for the rejection and notify the SBA procurement center representative in accordance with 19.505.

19.202-2 Locating small business sources.

The contracting officer shall, to the extent practicable, encourage maximum participation by small business concerns, small disadvantaged business concerns, and women-owned small business concerns in acquisitions by taking the following actions:

(a) Include on mailing lists all established and potential small business sources, including those located in labor surplus areas, if the concerns have submitted acceptable applications or appear from other representations to be qualified small business concerns.

(b) Before issuing solicitations, make every reasonable effort to find additional small business concerns, unless lists are already excessively long and only some of the concerns on the list will be solicited. This effort should include contacting the agency SBA procurement center representative, or if there is none, the SBA.

(c) Publicize solicitations and contract awards in the "Commerce Business Daily" (see Subparts 5.2 and 5.3).

19.202-3 Equal low bids.

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

19.202-4 Solicitation.

The contracting officer shall encourage maximum response to solicitations by small business, small disadvantaged business concerns, and women-owned small business concerns by taking the following actions:

(a) Allow the maximum amount of time practicable for the submission of offers.

(b) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined.

(c) Send solicitations to—

(1) All small business concerns on the solicitation mailing list; or

(2) A pro rata number of small business concerns when less than a complete list is used.

(d) Provide to any small business concern, upon its request, a copy of bid sets and specifications with respect to any contract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business must comply when doing business with other than the Government.

19.202-5 Data collection and reporting requirements.

Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions:

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

(b) Accurately measure the extent of participation by small, small disadvantaged, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see Subpart 4.6).

19.202-6 Determination of fair market price.

Agencies shall determine the fair market price as follows:

(a) For total and partial small business set-aside contracts and contracts utilizing the price evaluation adjustment for small disadvantaged business concerns, the fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404-1(b).

(b) For 8(a) contracts, both with respect to meeting the requirement at 19.806(b) and in order to accurately estimate the current fair market price, contracting officers shall follow the procedures at 19.807.

Subpart 19.3—Determination of Status as a Small Disadvantaged Business Concern or a Small Business Concern

19.301 Representation by the offeror.

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

(b) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business

unless (1) another offeror or interested party challenges the concern's small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning a specific representation shall be referred to the SBA in accordance with 19.302.

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

(d) If the SBA determines that the status of a concern as a "small business", a "small disadvantaged business" or a "women-owned small business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Section 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 124.6.

19.302 Protesting a small business representation.

(a) An offeror, the SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, the SBA Associate Administrator for Government Contracting, or another interested party may protest the small business representation of an offeror in a specific offer.

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

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, shall promptly forward the protest to the SBA Government Contracting Area Office for the geographical area where the principal office of the concern in question is located.

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

(d) In order to affect a specific solicitation, a protest must be timely. SBA's regulations on timeliness are contained in 13 CFR 121.1004. SBA's regulations on timeliness related

to protests of disadvantaged status are contained in 13 CFR 124, Subpart B.

(1) To be timely, a protest by any concern or other interested party must be received by the contracting officer (see (d)(1)(i) and (ii) of this section) by the close of business of the 5th business day after bid opening (in sealed bid acquisitions) or receipt of the special notification from the contracting officer that identifies the apparently successful offeror (in negotiated acquisitions) (see 15.503(a)(2)).

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

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

(2) A contracting officer's protest is always considered timely whether filed before or after award.

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

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

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

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

(f) Within 3 business days after receiving a copy of the protest and the form, the challenged offeror must file with the SBA a completed SBA Form 355 and a statement answering the allegations in the protest, and furnish evidence to support its position. If the offeror does not submit the required material within the 3 business days or another period of time granted by the SBA, the SBA may assume that the disclosure would be contrary to the offeror's interests.

(g)(1) Within 10 business days after receiving a protest, the challenged offeror's response, and other pertinent information, the SBA will determine the size status of the challenged concern and notify the contracting officer, the protester, and the challenged offeror of its decision by certified mail, return receipt requested.

(2) The SBA Government Contracting Area Director, or designee, will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of the determination. Award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with paragraph (i) of this section, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid.

(h)(1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until (i) the SBA has made a size determination or (ii) 10 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) After the 10-day period has expired, the contracting officer may, when practical, continue to withhold award until the SBA's determination is received, unless further delay would be disadvantageous to the Government.

(3) Whenever an award is made before the receipt of SBA's size determination, the contracting officer shall notify SBA that the award has been made.

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

(i) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by a Government Contracting Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the—

Office of Hearings and Appeals
Small Business Administration
Suite 5900, 409 3rd Street, SW
Washington, DC 20416

within the time limits and in strict accordance with the procedures contained in Subpart C of 13 CFR 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award shall not apply to that acquisition.

(j) A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. The protester shall be notified that the protest cannot be considered on the instant acquisition but has been referred to SBA for its consideration in any future actions. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA Government Contracting Area Office with a nota-

19.303

tion that award has been made. The protester shall be notified that the award has been made and that the protest has been forwarded to SBA for its consideration in future actions.

19.303 Determining standard industrial classification codes and size standards.

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

(b) If different products or services are required in the same solicitation, the solicitation shall identify the appropriate small business size standard for each product or service.

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's SIC code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely SIC code appeal.

(2)(i) The appeal petition must be in writing and must be addressed to the—

Office of Hearings and Appeals
Small Business Administration
Suite 5900, 409 3rd Street, SW
Washington, DC 20416

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

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

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

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

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

(i) The SBA official who issued the size determination;

(ii) The contracting officer who assigned the SIC code to the acquisition;

(iii) The business concern whose size status is at issue;

(iv) All persons who filed protests; and

(v) SBA's Office of General Counsel.

(4) Upon receipt of a SIC code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR 134), and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise

specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the SIC code appeal.

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

19.304 Disadvantaged business status.

(a) To be eligible to receive a benefit as a prime contractor based on its disadvantaged status, a concern, at the time of its offer, must either be certified as a small disadvantaged business (SDB) concern or have a completed SDB application pending at the SBA or a Private Certifier (see 19.001).

(b) The contracting officer may accept an offeror's representation that it is an SDB concern for general statistical purposes. The provision at 52.219-1, Small Business Program Representations, or 52.212-3(c)(2), Offeror Representations and Certifications-Commercial Items, is used to collect SDB data for general statistical purposes.

(c) The provision at 52.219-22, Small Disadvantaged Business Status, or 52.212-3(c)(7), Offeror Representations and Certifications-Commercial Items, is used to obtain SDB status when the prime contractor may receive a benefit based on its disadvantaged status. The mechanism that may provide benefits on the basis of disadvantaged status as a prime contractor is a price evaluation adjustment for SDB concerns (see Subpart 19.11).

(1) If the apparently successful offeror has represented that it is currently certified as an SDB, the contracting officer may confirm that the concern is listed on the SBA's register by accessing the list at <http://www.sba.gov> or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(2) If the apparently successful offeror has represented that its SDB application is pending at the SBA or a Private Certifier, and its position as the apparently successful offeror is due to the application of the price evaluation adjustment, the contracting officer shall follow the procedure in paragraph (d) of this section.

(d) Notifications to SBA of potential awards to offerors with pending SDB applications.

(1) The contracting officer shall notify the—

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

The notification shall contain the name of the apparently successful offeror, and the names of any other offerors that have represented that their applications for SDB status are pending at the SBA or a Private Certifier and that could receive the award due to the application of a price evaluation adjustment if the apparently successful offeror is determined not to be an SDB by the SBA.

(2) The SBA will, within 15 calendar days after receipt of the notification, determine the disadvantaged status of the apparently successful offeror and, as appropriate, any other offerors referred by the contracting officer and will notify the contracting officer.

(3) If the contracting officer does not receive an SBA determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer shall presume that the apparently successful offeror, and any other offerors referred by the contracting officer, are not disadvantaged, and shall make award accordingly, unless the contracting officer grants an extension to the 15-day response period. No written determination is required for the contracting officer to make award at any point following the expiration of the 15-day response period.

(4) When the contracting officer makes a written determination that award must be made to protect the public interest, the contracting officer may proceed to contract award without notifying SBA or before receiving a determination of SDB status from SBA during the 15-day response period. In both cases, the contracting officer shall presume that the apparently successful offeror, or any other offeror referred to the SBA whose SDB application is pending, is not an SDB and shall make award accordingly.

19.305 Protesting a representation of disadvantaged business status.

(a) This section applies to protests of a small business concern's disadvantaged status as a prime contractor. Protests of a small business concern's disadvantaged status as a subcontractor are processed under 19.703(a)(2). Protests of a concern's size as a prime contractor are processed under 19.302. Protests of a concern's size as a subcontractor are processed under 19.703(b). An offeror, the contracting officer, or the SBA may protest the apparently successful offeror's representation of disadvantaged status if the concern is eligible to receive a benefit based on its disadvantaged status (see Subpart 19.11).

(b) An offeror, excluding an offeror determined by the contracting officer to be non-responsive or outside the competitive range, or an offeror that SBA has previously found to be ineligible for the requirement at issue, may protest the apparently successful offeror's representation of disadvantaged status by filing a protest in writing with the contracting officer. SBA regulations concerning protests are contained in 13 CFR 124, Subpart B. The protest—

(1) Must be filed within the times specified in 19.302(d)(1); and

(2) Must contain specific facts or allegations supporting the basis of protest.

(c) The contracting officer or the SBA may protest in writing a concern's representation of disadvantaged status at any time following bid opening or notification of intended award.

(1) If a contracting officer's protest is based on information provided by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA may protest a concern's representation of disadvantaged status by filing directly with its Assistant Administrator for Small Disadvantaged Business Certification and Eligibility and notifying the contracting officer.

(d) The contracting officer shall return premature protests to the protestor. A protest is considered to be premature if it is submitted before bid opening or notification of intended award. SBA normally will not consider a postaward protest. SBA may consider a postaward protest in its discretion where it determines that an SDB determination after award is meaningful (*e. g.*, where the contracting officer agrees to terminate the contract if the protest is sustained).

(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

19.306

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 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. The provision shall be used with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a).

(b) The contracting officer shall 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.

(c) When contracting by sealed bidding, the contracting officer shall insert the provision at 52.219-2, Equal Low Bids, in solicitations and contracts when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

Subpart 19.4—Cooperation with the Small Business Administration

19.401 General.

(a) The Small Business Act is the authority under which the Small Business Administration (SBA) and agencies consult and cooperate with each other in formulating policies to ensure that small business interests will be recognized and protected.

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

19.402 Small Business Administration procurement center representatives.

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

(b) Upon their request and subject to applicable acquisition and security regulations, contracting officers shall give SBA procurement center representatives access to all reasonably obtainable contract information that is directly pertinent to their official duties.

(c) The duties assigned by SBA to its procurement center representatives include the following:

(1) Reviewing proposed acquisitions to recommend—

(i) The setting aside of selected acquisitions not unilaterally set aside by the contracting officer,

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

(iii) Breakout of components for competitive acquisitions.

(2) Reviewing proposed acquisition packages provided in accordance with 19.202-1(e). If the SBA procurement center representative believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. The recommendation shall be made to the contracting officer within 15 days after receipt of the package.

(3) Recommending concerns for inclusion on solicitation mailing lists or on a list of concerns to be solicited in a specific acquisition.

(4) Appealing to the chief of the contracting office any contracting officer's determination not to solicit a concern recommended by the SBA for a particular acquisition, when not doing so results in no small business being solicited.

(5) Conducting periodic reviews of the contracting activity to which assigned to ascertain whether it is complying with the small business policies in this regulation.

(6) Sponsoring and participating in conferences and training designed to increase small business participation in the contracting activities of the office.

19.403 Small Business Administration breakout procurement center representative.

(a) The SBA is required by section 403 of Pub. L. 98-577 to assign a breakout procurement center representative to each major procurement center. A major procurement center means a procurement center that, in the opinion of the administrator, purchases substantial dollar amounts of other than commercial items, and which has the potential to incur significant savings as a result of the placement of a breakout procurement representative. The SBA breakout procurement center representative is an advocate for (1) the appropriate use of full and open competition, and (2) the breakout of items, when appropriate and while maintaining the integrity of the system in which such items are used. The SBA breakout procurement center representative is in addition to the SBA procurement center representative (see 19.402). When an SBA breakout procurement center representative is assigned, the SBA is required to assign at least two collocated small business technical advisors. Assigned SBA breakout procurement center representatives and technical advisors are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its breakout procurement center representatives and technical advisors security clearances required by the contracting agency.

(b) Contracting officers shall comply with 19.402(b) in their relationships with SBA breakout procurement center representatives and SBA small business technical advisors.

(c) The SBA breakout procurement center representative is authorized to—

(1) Attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be acquired using other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(2) Review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(3) Review restrictions on competition arising out of restrictions on the rights of the United States in technical data and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(4) Obtain from any governmental source, and make available to personnel of the appropriate center, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously acquired noncompetitively due to the unavailability of such technical data;

(5) Have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;

(6) Receive unsolicited engineering proposals and, when appropriate—

(i) Conduct a value analysis of such proposal to determine whether it, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate center recommendations with respect to such proposal; or

(ii) Forward such proposals without analysis to personnel of the center responsible for reviewing them who shall furnish the breakout procurement center representative with information regarding the proposal's disposition;

(7) Review the systems that account for the acquisition and management of technical data within the procurement center to ensure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive;

(8) Appeal the failure by the procurement center to act favorably on any recommendation made pursuant to subparagraphs (c)(1) through (7) of this section. Such appeal must be in writing and shall be filed and processed in accordance with the appeal procedures set out at 19.505;

(9) Conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which assigned. Such sessions shall acquaint the participants with the duties and objectives of the representative and shall instruct them in the methods designed to further the breakout of items for procurement through full and open competition; and

(10) Prepare and personally deliver an annual briefing and report to the head of the procurement center to

which assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive the briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by the representative.

(d) The duties of the SBA small business technical advisors are to assist the SBA breakout procurement center representative in carrying out the activities described in (c)(1) through (7) of this section to assist the SBA procurement center representatives (see FAR 19.402).

Subpart 19.5—Set-Asides for Small Business

19.501 General.

(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses. A set-aside of a single acquisition or a class of acquisitions may be total or partial.

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

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

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

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

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

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

19.502 Setting aside acquisitions.

19.502-1 Requirements for setting aside acquisitions.

The contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation’s full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist. This requirement does not apply to purchases of \$2,500 or less, or purchases from required sources of supply under Part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502-2 Total set-asides.

(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns and shall be set aside unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under Subpart 19.8, Contracting with the Small Business Administration, or under 19.1006(c), Emerging small business set-aside.

(b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although

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

(c) For set-asides other than for construction or services, any concern proposing to furnish a product which it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has granted either a waiver or exception to the nonmanufacturer rule (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see 19.102(f)(4) and (5)). In addition, SBA has excepted procurements processed under simplified acquisition procedures (see Part 13), where the anticipated cost of the procurement will not exceed \$25,000, from the nonmanufacturer rule. Waivers permit small businesses to provide any firm's product. The exception permits small businesses to provide any domestic firm's product. In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.

(d) The requirements of this subsection do not apply to acquisitions over \$25,000 during the period when set-asides cannot be considered for the four designated industry groups (see 19.1006(b)).

19.502-3 Partial set-asides.

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

(1) A total set-aside is not appropriate (see 19.502-2);

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

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

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

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

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall

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this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see Subpart 19.8).

(2) Agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational unit(s) that failed to meet the small business participation goal.

(c) *Emerging small business set-aside.* (1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal Procurement Policy shall be set aside for ESB's; provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB's that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall—

(i) For acquisitions \$25,000 or less, proceed in accordance with Subpart 19.5; or

(ii) For acquisitions over \$25,000, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with paragraph (c)(1) (i) or (ii) of this section.

(3) When using other than simplified acquisition procedures for ESB set-asides, the clause at 52.219-14, Limitations on Subcontracting, shall be placed in all solicitations and resulting contracts.

(d) To expand small business participation in the targeted industry categories, each participating agency will develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.

19.1007 Solicitation provisions.

(a) The contracting officer shall insert in full text the provision at 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the four designated industry groups.

(b) The contracting officer shall insert in full text the provision at 52.219-20, Notice of Emerging Small Business

Set-Aside, in all solicitations for emerging small businesses in accordance with 19.1006(c).

(c) The contracting officer shall insert in full text the provision at 52.219-21, Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of \$25,000.

Subpart 19.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

19.1101 General.

A price evaluation adjustment for small disadvantaged business concerns shall be applied as determined by the Department of Commerce (see 19.201(b)). Joint ventures may qualify provided the requirements set forth in 13 CFR 124.1002(f) are met.

19.1102 Applicability.

(a) The price evaluation adjustment shall be used in competitive acquisitions.

(b) The price evaluation adjustment shall not be used in acquisitions that—

(1) Are not greater than the simplified acquisition threshold;

(2) Are awarded pursuant to the 8(a) program; or

(3) Are set aside for small business concerns.

19.1103 Procedures.

(a) Give offers from small disadvantaged business concerns a price evaluation adjustment by adding the factor determined by the Department of Commerce to all offers, except—

(1) Offers from small disadvantaged business concerns that have not waived the evaluation adjustment;

(2) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.402;

(3) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(4) For DOD, NASA, and Coast Guard acquisitions, otherwise successful offers from historically black colleges and universities or minority institutions; or

(5) For DOD acquisitions, otherwise successful offers of qualifying country end products (see DFARS 225.000-70 and 252.225-7001).

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

(c) Do not evaluate offers using the price evaluation adjustment when it would cause award, as a result of this adjustment, to be made at a price that exceeds fair market price by more than the factor as determined by the Department of Commerce (see 19.202-6(a)).

19.1104 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, in solicitations and contracts when the circumstances in 19.1102 apply. The contracting officer shall insert the authorized price evaluation adjustment factor. The clause shall be used with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

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PART 33—PROTESTS, DISPUTES, AND APPEALS

Sec.
33.000 Scope of part.

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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.

“Day,” as used in this subpart, means a calendar day, unless otherwise specified. In the computation of any period—

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

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

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

(2) 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,” as used in this subpart, 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,” as used in this subpart, 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,” as used in this subpart, means a written objection by an interested party to any of the following:

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

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

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

(d) 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 General Accounting Office (GAO). (See 19.302 for protests of small business status, and 19.305 for protests of disadvantaged 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 General Accounting Office; and

(2) Pay appropriate costs as stated in 33.104(h).

(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 col-

lection, 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 subparagraph 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 subparagraph (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 acqui-

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 52.219-9 Small, Small Disadvantaged and Women-Owned 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]
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- 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.
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- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
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- 52.222-6 Davis-Bacon Act.
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- 52.222-17 Labor Standards for Construction Work—Facilities Contracts.
- 52.222-18—52.222-19 [Reserved]
- 52.222-20 Walsh-Healey Public Contracts Act.
- 52.222-21 Certification of Nonsegregated Facilities.
- 52.222-22 Previous Contracts and Compliance Reports.
- 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.
- 52.222-24 Preaward On-Site Equal Opportunity Compliance Review.
- 52.222-25 Affirmative Action Compliance.
- 52.222-26 Equal Opportunity.
- 52.222-27 Affirmative Action Compliance Requirements for Construction.
- 52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.
- 52.222-29 Notification of Visa Denial.
- 52.222-30—52.222-34 [Reserved]
- 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
- 52.222-36 Affirmative Action for Workers with Disabilities.
- 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
- 52.222-38—52.222-40 [Reserved]
- 52.222-41 Service Contract Act of 1965, as Amended.
- 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 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).
- 52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.
- 52.222-49 Service Contract Act—Place of Performance Unknown.
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- 52.223-1 Clean Air and Water Certification.
- 52.223-2 Clean Air and Water.
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- 52.225-4 Evaluation of Foreign Currency Offers.
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- 52.225-7 Balance of Payments Program.
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- 52.225-9 Buy American Act—Trade Agreements—Balance of Payments Program.

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		52.232-11	Extras.

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) 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 (OCT 1998)

(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 standard industrial classification code designated.

“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.

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

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

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

“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 the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Taxpayer identification number (TIN) (26 U.S.C. 6050M). (1) *Taxpayer Identification Number (TIN).*

TIN: _____.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of a Federal, state, or local government;

Other. State basis. _____

(2) *Corporate status.*

Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

Other corporate entity;

Not a corporate entity:

Sole proprietorship

Partnership

Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(3) *Common parent.*

Offeror is not owned or controlled by a common parent:

Name and TIN of common parent:

Name _____

TIN _____

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. 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) *Small disadvantaged business concern.* 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) *Women-owned small business concern.* The offeror represents that it is, is not a women-owned small business concern.

NOTE: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

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

(5) *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:

(6) *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 four 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 four 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

(7) *(Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, 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 is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration, 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)(7)(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:_____.]

(d) *Certifications and representations required to implement provisions of Executive Order 11246—(1) Certification of non-segregated facilities.* (Applies only if the contract amount is expected to exceed \$10,000)—By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) *Previous contracts and compliance.* The offeror represents that—

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

contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

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

(3) *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 Subparts 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 \$100,000.) 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.

(f) *Buy American Act—Trade Agreements—Balance of Payments Program Certificate.* (Applies only if FAR clause 52.225-9, Buy American Act—Trade Agreement—Balance of Payments Program, is included in this solicitation.) (1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act—Trade Agreements—Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(2) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this pro-

vision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(i) The offeror certifies that the following supplies qualify as “designated or NAFTA country end products” as those terms are defined in the clause entitled “Buy American Act—Trade Agreements—Balance of Payments Program”:

(Insert line item numbers)

(ii) The offeror certifies that the following supplies qualify as “Caribbean Basin country end products” as that term is defined in the clause entitled “Buy American Act—Trade Agreements—Balance of Payments Program”:

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(g)(1) *Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.* (Applies only if FAR clause 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, is included in this solicitation.) (i) The offeror certifies that each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program,” and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(ii) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN

(List as necessary)

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offer-

ors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. The offeror certifies that the following supplies qualify as “NAFTA country end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

(Insert line item numbers)

(iv) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products.

(2) *Alternate I.* If Alternate I to the clause at 52.225-21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

(g)(1)(iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified and certified below will not be deemed Canadian end products.

The offeror certifies that the following supplies qualify as “Canadian end products” as that term is defined in the clause entitled “Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program”:

[Insert line item numbers]

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549).* The offeror certifies, to the best of its knowledge and belief, that—

(1) The offeror and/or any of its principals are, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) Have, have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and are, are

not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(End of provision)

Alternate I (Oct 1998). As prescribed in 12.301(b)(2), add the following paragraph (c)(8) to the basic provision:

(8) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(2) or (c)(7) 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.

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS
(APR 1998)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance 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 post-acceptance rights—

(1) Within a reasonable 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.

(b) *Assignment.* The Contractor or its assignee’s rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency

in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *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 commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include—

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment.

Contractors are encouraged to assign an identification number to each invoice.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Unless otherwise provided by an addendum to this contract, the Government shall make payment in accordance with the clause at FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, which is incorporated herein by reference. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. 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 which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.

- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(End of clause)

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 (OCT 1998)

(a) The Contractor agrees to comply with the following 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) 52.222-3, Convict Labor (E.O. 11755); and
- (2) 52.233-3, Protest after Award (31 U.S.C 3553).

(b) The Contractor agrees to comply with the FAR clauses in this paragraph (b) which 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 or components:

(Contracting Officer shall check as appropriate.)

- ___ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).
- ___ (2) [Reserved]
- ___ (3) 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3)).
- ___ (4) 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).
- ___ (5) 52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).
- ___ (6)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
 - (ii) ___ Alternate I of 52.219-23.
- ___ (7) 52.222-26, Equal Opportunity (E.O. 11246).
- ___ (8) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- ___ (9) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- ___ (10) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

- ___ (11) 52.225-3, Buy American Act—Supplies (41 U.S.C. 10).
- ___ (12) 52.225-9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501-2582).
- ___ (13) [Reserved]
- ___ (14) 52.225-18, European Union Sanction for End Products (E.O. 12849).
- ___ (15) 52.225-19, European Union Sanction for Services (E.O. 12849).
- ___ (16)(i) 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C. 10, Pub. L. 103-187).
- ___ (ii) Alternate I of 52.225-21.
- ___ (17) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
- ___ (18) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which 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 or components:

(Contracting Officer check as appropriate.)

- ___ (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).
- ___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (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) (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 (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- ___ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor agrees to 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 final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components—

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);
- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
- (4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(End of clause)

52.213-1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

FAST PAYMENT PROCEDURE (FEB 1998)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall prepare the receiving report on the prescribed form or, alternatively, shall include the following information on the invoice, in addition to that required in paragraph (c)(1) of this clause:

(i) A statement in prominent letters "NO RECEIVING REPORT PREPARED."

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level—

(A) National stock number and/or manufacturer's part number;

(B) Unit of measure;

(C) Ship-To Point;

(D) Mark-For Point, if in the contract; and

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

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(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."

(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) (AUG 1998)

(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 (AUG 1996) (E.O. 11755).

(ii) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

(i) 52.225-11, Restrictions on Certain Foreign Purchases (AUG 1998).

(ii) 52.232-1, Payments (APR 1984).

(iii) 52.232-8, Discounts for Prompt Payment (MAY 1997).

(iv) 52.232-11, Extras (APR 1984).

(v) 52.232-25, Prompt Payment (JUN 1997).

(vi) 52.232-33, Mandatory Information for Electronic Funds Transfer Payment (AUG 1996).

(vii) 52.233-1, Disputes (OCT 1995).

(viii) 52.244-6, Subcontracts for Commercial Items and Commercial Components (OCT 1995).

(ix) 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) 52.222-20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States).

(ii) 52.222-26, Equal Opportunity (APR 1984) (E.O. 11246) (Applies to contracts over \$10,000).

(iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212) (Applies to contracts over \$10,000).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000).

(v) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212) (Applies to contracts over \$10,000).

(vi) 52.222-41, Service Contract Act of 1965, As Amended (MAY 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500).

(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (APR 1998) (E.O. 12856) (Applies to services performed on Federal facilities).

(viii) 52.225-3, Buy American Act—Supplies (JAN 1994) (41 U.S.C. 10) (Applies to supplies, and to services involving the furnishing of supplies, if the contract was—

(A) Under \$25,000; or

(B) Set aside for small business concerns, regardless of dollar value).

(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 (JULY 1995) (Applies to contracts over \$25,000).

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

(iii) 52.247-29, F.o.b. Origin (JUN 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 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 commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. 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.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

52.214-1 Solicitation Definitions—Sealed Bidding.

As prescribed in 14.201-6(b)(1), insert the following provision:

SOLICITATION DEFINITIONS—SEALED BIDDING (JUL 1987)

“Government” means United States Government.

“Offer” means “bid” in sealed bidding.

“Solicitation” means an invitation for bids in sealed bidding.

(End of provision)

52.214-2 Type of Business Organization—Sealed Bidding.

As prescribed in 14.201-6(b)(2), insert the following provision:

TYPE OF BUSINESS ORGANIZATION—SEALED BIDDING
(JUL 1987)

The bidder, by checking the applicable box, represents that—

(a) It operates as a corporation incorporated under the laws of the State of _____, an individual, a partnership, a nonprofit organization, or a joint venture; or

(b) If the bidder is a foreign entity, it operates as an individual, a partnership, a nonprofit organization, a joint venture, or a corporation, registered for business in _____.

(Country)

(End of provision)

52.214-3 Amendments to Invitations for Bids.

As prescribed in 14.201-6(b)(3), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 False Statements in Bids.

As prescribed in 14.201-6(b)(4), insert the following provision in all invitations for bids:

FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

As prescribed in 17.208(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT
(MAR 1989)

(a) The Government may extend the term of this contract by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months)(years).

(End of clause)

52.218 [Reserved]

52.219-1 Small Business Program Representations.

As prescribed in 19.306(a), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 1998)

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

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

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

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

(2) (Complete only if 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 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.

(c) *Definitions.*

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

“Woman-owned small business concern,” as used in this provision, means a small business concern—

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

(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 or small disadvantaged 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 (Oct 1998). As prescribed in 19.306(a), add the following paragraph (b)(4) to the basic provision:

(4) (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 19.306(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—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 (JUL 1996)

(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 agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. 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 in connection with construction or service contracts.

(End of clause)

Alternate 1 (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).

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 (JUL 1996)

(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.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the _____ [*insert name of contracting agency*].

(End of clause)

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

As prescribed in 19.811-3(d), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JAN 1997)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) SIC code ____* is specifically included in the Offeror's approved business plan;

(2) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(3) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. 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 subparagraph does not apply in connection with construction or service contracts.

(2) The _____ [*insert name of SBA's contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

[**Insert SIC code assigned to the acquisition by the contracting activity.*]

Alternate I (Nov 1989). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subparagraph (a)(4) to paragraph (a) of the clause:

(4) The offeror's approved business plan is on the file and serviced by _____ [*Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA*].

Alternate II (Dec 1996). 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 subparagraph (d)(1).

52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

As prescribed in 19.1007(a), insert the following provision:

SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

(a) *Definition.* "Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) [*Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.*] The Offeror is, is not an emerging small business.

(c) [*Complete only if the Offeror is a small business or an emerging small business, indicating its size range.*] Offeror's number of employees for the past 12 months [*check this column if size standard stated in solicitation is expressed in terms of number of employees*] or Offeror's average annual gross revenue for the last 3 fiscal years [*check this column if size standard stated in solicitation is expressed in terms of annual receipts*]. [*Check one of the following.*]

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NO. OF EMPLOYEES	AVG. ANNUAL GROSS REVENUES
___ 50 or fewer	___ \$1 million or less
___ 51 - 100	___ \$1,000,001 - \$2 million
___ 101 - 250	___ \$2,000,001 - \$3.5 million
___ 251 - 500	___ \$3,500,001 - \$5 million
___ 501 - 750	___ \$5,000,001 - \$10 million
___ 751 - 1,000	___ \$10,000,001 - \$17 million
___ Over 1,000	___ Over \$17 million

(End of provision)

52.219-20 Notice of Emerging Small Business Set-Aside.

As prescribed in 19.1007(b), insert the following provision:

NOTICE OF EMERGING SMALL BUSINESS SET-ASIDE
(JAN 1991)

Offers or quotations under this acquisition are solicited from emerging small business concerns only. Offers that are not from an emerging small business shall not be considered and shall be rejected.

(End of provision)

52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.

As prescribed in 19.1007(c), insert the following provision:

SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED
INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS
COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

[Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]

Offeror represents as follows:

Offeror's number of employees for the past 12 months *[check this column if size standard stated in solicitation is expressed in terms of number of employees]* or Offeror's average annual gross revenue for the last 3 fiscal years *[check this column if size standard stated in solicitation is expressed in terms of annual receipts]*. *[Check one of the following.]*

NO. OF EMPLOYEES	AVG. ANNUAL GROSS REVENUES
___ 50 or fewer	___ \$1 million or less
___ 51 - 100	___ \$1,000,001 - \$2 million
___ 101 - 250	___ \$2,000,001 - \$3.5 million

___ 251 - 500	___ \$3,500,001 - \$5 million
___ 501 - 750	___ \$5,000,001 - \$10 million
___ 751 - 1,000	___ \$10,000,001 - \$17 million
___ Over 1,000	___ Over \$17 million

(End of provision)

52.219-22 Small Disadvantaged Business Status.

As prescribed in 19.306(b), insert the following provision:

SMALL DISADVANTAGED BUSINESS STATUS (OCT 1998)

(a) *General.* This provision is used to assess an offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219-1, Small Business Program Representation.

(b) *Representations.* (1) *General.* The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

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

(B) Where the concern is owned by one or more disadvantaged 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

(C) It is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration; or

(ii) It has 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.

(2) *For Joint Ventures.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) 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:_____.]*

(c) *Penalties and Remedies.* Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall—

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

(End of provision)

52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in 19.1104, insert the following clause:

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 1998)

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

“Small disadvantaged business concern” means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

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

(ii) Where the concern is owned by one or more disadvantaged 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

(iii) It is listed, on the date of its representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration;

(2) It has 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. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

“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 (DoD), the National Aeronautics and Space Administration (NASA), 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.

“Minority institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for purposes of this clause, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

“United States” means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, and the District of Columbia.

(b) *Evaluation adjustment.* (1) Offers will be evaluated by adding a factor of _____ [percentage to be inserted by the contracting officer] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;

(ii) For DOD, NASA, and Coast Guard acquisitions, otherwise successful offers from historically black colleges or universities or minority institutions;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government; and

(v) For DOD acquisitions, otherwise successful offers of qualifying country end products (see sections 225.000-70 and 252.225-7001 of the Defense FAR Supplement).

(2) The factor 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. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

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

_____ Offeror elects to waive the adjustment.

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

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

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(ii) Supplies (other than procurement from a non-manufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

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

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

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

small disadvantaged business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (Oct 1998). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

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PR OVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					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	
52.211-15 Defense Priority and Allocation Requirements.	11.604(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.211-16 Variation in Quantity.	11.703(a)	C	Yes	F	A				A						A						A		A	
52.211-17 Delivery of Excess Quantities.	11.703(b)	C	Yes	F	O										O						O		O	
52.211-18 Variation in Estimated Quantity.	11.703(c)	C	Yes								A												A	
52.212-1 Instructions to Offerors—Commercial Items.	12.301(b)(1)	P	Yes	NA	A		A		A						A	A	A	A	A	A	A	A	A	R
52.212-2 Evaluation — Commercial Items.	12.301(c)(1)	P	No	NA	O		O		O						O	O	O	O	O	O	O	O	O	O
52.212-3 Offeror Representations and Certifications— Commercial Items.	12.301(b)(2)	P	No	NA	A		A		A						A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(2)	P	No	NA	A		A		A						A	A	A	A	A	A	A	A	A	R
52.212-4 Contract Terms and Conditions—Commercial Items.	12.301(b)(3)	C	Yes	NA	A		A		A						A	A	A	A	A	A	A	A	A	R
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items	12.301(b)(4)	C	No	NA	A		A		A						A	A	A	A	A	A	A	A	A	R
52.213-1 Fast Payment Procedure.	13.404	C	Yes		A										A						A		A	
52.213-2 Invoices.	13.302-5(b)	C	Yes																				A	
52.213-3 Notice to Supplier.	13.302-5(c)	C	Yes																				A	

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PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																				
					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		
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	C	Yes	I	A	A								A	A							A			
52.217-8 Option to Extend Services.	17.208(f)	C	Yes	I						A	A			A								A	A		
52.217-9 Option to Extend the Term of the Contract.	17.208(g)	C	Yes	I						A	A			A								A	A		
52.219-1 Small Business Program Representations.	√ 19.306(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.306(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-2 Equal Low Bids.	√ 19.306(c)	P	No	K	A					A					A	A	A					A	A		A
52.219-6 Notice of Total Small Business Set-Aside.	19.508(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.508(c)	C	Yes	I	A									A										A	
52.219-7 Notice of Partial Small Business Set-Aside.	19.508(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	19.508(d)	C	Yes	I	A									A											
52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.	19.708(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					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, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.	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 I	19.708(b)(1)	C	Yes	I	A		A		A		A			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
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) and 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																			

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PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																						
		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	
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.	19.1007(a)	P	No	K	A	A			A	A	A	A	A						A		A			
52.219-20 Notice of Emerging Small Business Set-Aside.	19.1007(b)	P	No	K																			A	
52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.	19.1007(c)	P	No	K	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.	19.306(b)	P	No	K	A	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	A
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

[The next page is Matrix 21.]

