



**U.S. DEPARTMENT OF COMMERCE  
SMALL BUSINESS PROGRAM  
MANUAL**

**PROCUREMENT MECHANISMS  
Chapter One**

# PROCUREMENT MECHANISMS

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## **SECTION 1 – OVERVIEW**

### **1.1 Background**

The Small Business Act (hereafter referred to as “the Act”), promulgated by the Federal Acquisition Regulation (FAR) and U.S. Small Business Administration (SBA) regulation (13 Code of Federal Regulations (13 CFR)), requires agencies to ensure that a fair proportion of contracts are awarded to small businesses, including socioeconomic small businesses. When planning an acquisition, the contracting officer shall first consider socioeconomic small business concerns for award of a prime contract before small business concerns, and consider small business for award prior to seeking alternative suppliers. Socioeconomic and small business concerns must also be given first consideration as a member of a team arrangement, including joint ventures and prime contractor/subcontractor relationships.

The contracting officer is to fully utilize small business contracting assistance programs authorized by the FAR and 13 CFR.

### **1.2 Purpose**

The Commerce Small Business Program Manual (CSBPM) provides guidance to all offices and operating units, including procurement offices, to ensure that consistent Small Business Program management procedures and practices are established and followed throughout the Department, and which conform to the Small Business Act, FAR, 13 CFR, and DOC Small Business Program policies. The CSBPM provides procedures to effectively maximize the utilization of socioeconomic small business and small business concerns in DOC’s acquisitions, regardless of the dollar value and place of performance.

The CSBPM shall be used in tandem with acquisition guidance issued by the Office of Acquisition Management (OAM). If there is any conflict between the CSBPM and OAM’s guidance, the FAR and 13 CFR take precedence. Any perceived conflict between the CSBPM and OAM’s guidance should be reported to the bureau small business specialist, who will bring it to the attention of the OSDBU Director.

### **1.3 Applicability**

The requirements of this chapter are applicable to all acquisitions issued by DOC and its bureaus, where contractor performance takes place within the United States and its outlying territories and outside the United States and its territories.

## 1.4 Roles and Responsibilities

### 1.4.1 Office of Small and Disadvantaged Business Utilization (OSDBU)

The duties and responsibilities of the Director for the OSDBU are described in 15 USC § 644 and DOO 15-9. The duties of the Director are as follows:

- a. Serve as the Department's focal point and advocate for socioeconomic small business and small business concerns and interaction with the SBA in carrying out the Department's functions and duties in sections 8, 15, and 31 of the Small Business Act;
- b. Provide leadership and direction to DOC's offices and operating units, including procurement offices, to maximize the utilization of socioeconomic small business and small business concerns in prime contracts and subcontracts;
- c. Develop and implement DOC policies, procedures, and practices in coordination with the SPE to ensure that consistent Small Business Program management and acquisition procedures and practices are established and followed throughout the Department, and which conform to the FAR, 13 CFR, and the Small Business Act;
- d. Ensure performance of acquisition activities increase the number of awards and award dollars to small business concerns, in all categories, to achieve DOC's prime and subcontracting socioeconomic small business and small business goals;
- e. In coordination with the SPE, oversee DOC's compliance with policies, procedures, and practices to support the Small Business Program through normal oversight reviews of bureau procurement offices;
- f. In coordination with the SPE, oversee DOC's implementation of policies, procedures, and practices to support the Small Business Program through normal oversight reviews of bureau procurement offices;
- g. Appoint and supervise small business specialists who may also be required to perform the duties of the small business technical adviser if a PCR has been assigned to the bureau;
- h. Provide the CAO and SPE expert advice on acquisition strategies, justifications, and SBA appeals;

- i. Approve CD-570, Small Business Set-Aside Review, packages; and
- j. Assist small business concerns, prime and subcontractors, to obtain payments, late payment interest penalties, or information regarding payments.

### **1.4.2 Chief Acquisition Officer**

The duties and responsibilities of the Chief Acquisition Officer (CAO) are described in 41 USC §1702. The duties and responsibilities as they relate to DOC's Small Business Program are as follows:

- a. Ensure the achievement of DOC's mission through the management of the agency's acquisition activities;
- b. Monitor and evaluate DOC's performance of its Small Business Program acquisition activities and small business goal achievements;
- c. Increase the use of set-asides, also known as full and open competition after the exclusion of sources, to meet DOC's requirements;
- d. Make acquisition decisions consistent with all applicable laws, including the Act, as amended, FAR, 13 CFR, and DOC policies; and
- e. Render the final decision for DOC on the SBA Administrator's appeal of the contracting officer's rejection of the Procurement Center Representative's (PCR's) recommendation, in accordance with FAR 19.505(e).

### **1.4.3 Senior Procurement Executive**

The duties and responsibilities of the Senior Procurement Executive (SPE) are described in 41 USC §1702 and DOO 20-26. The duties and responsibilities as they relate to the Small Business Program are as follows:

- a. Develop and implement DOC policies, procedures, and practices for acquisitions in coordination with the Director for the Office of Small and Disadvantaged Business Utilization (OSDBU) to comply with the Act, FAR, 13 CFR, and the CSBPM;
- b. Ensure performance of acquisition activities increase the number of awards and award dollars to small business concerns, in all categories, to achieve DOC's prime and subcontracting socioeconomic small business and small business goals;

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- c. In coordination with the OSDBU Director, oversee DOC's compliance with policies, procedures, and practices to support the Small Business Program through normal oversight reviews of bureau procurement offices;
- d. Approve Justifications and Approvals (J&A) for sole-source 8(a) contracts over \$22 million;
- e. Approve Determination and Findings (D&F) for consolidated acquisitions;
- f. Submit D&F for bundled and substantially bundled acquisitions to the Deputy Secretary for approval; and
- g. Render decision in response to a PCR's appeal of the contracting officer's rejection as the designee for the Head of the Contracting Activity, in accordance with the FAR 19.505(b) and CAM 1301.70, Delegation of Contracting Authority.

### 1.4.4 Senior Bureau Procurement Official

The duties and responsibilities of the Senior Bureau Procurement Official (BPO) as they relate to the Small Business Program are as follows:

- a. Comply with the Act, FAR, 13 CFR, and DOC policies and guidance that support DOC's Small Business Program;
- b. Submit nomination of qualified individuals to the OSDBU Director for appointment as the small business specialist to perform the functions and duties related to sections 8, 15, and 31 of the Act, and who may also be required to perform the duties of the small business technical adviser if a procurement center representative (PCR) has been assigned to the bureau;
- c. Ensure the bureau acquisition workforce cooperates and provides support to the small business specialist and OSDBU;
- d. Develop a two-year forecast of contract opportunities for socioeconomic small business and small business concerns using DOC's automated system or a system approved by the SPE, ensuring the data is accurate and kept current. (Reference CAM 1307.1, Acquisition Planning, Section 3.4 Annual Data Call, for further instructions);
- e. Annually sponsor and organize outreach events, information sessions, and training conferences specifically for the benefit of socioeconomic small business and small business concerns;

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- f. Develop and implement an annual strategic plan that describes specific actions and measurable performance targets to increase award dollars to socioeconomic small business and small business concerns, increase the number of socioeconomic small business and small business contractors; guard against unnecessary bundling and consolidation; and achieve prime and subcontracting goals;
- g. Prepare a year-end report that analyzes and assesses goal achievement performance, effectiveness of action items described in the annual strategic plan, and corrective actions that will be taken to improve performance and achieve any missed goals;
- h. Validate the accuracy of data for small business contracts reported in the Federal Procurement Data System-Next Generation (FPDS-NG), including relying on analytical reports generated by OAM and the FPDS-NG Anomaly reports on possible coding errors to make corrections to contract action reports;
- i. Ensure the bureau acquisition workforce works cooperatively with the PCR (if a PCR is assigned to the bureau); provides access to all reasonably obtainable contract information pertinent to the PCR's official duties; and provides timely and responsive replies to the PCR's concerns, recommendations, and appeals; and
- j. Provide the PCR and other SBA personnel, as appropriate, suitable work space as needed, to review contract files and meet with acquisition staff.

### 1.4.5 Contracting Officer

The duties and responsibilities of the contracting officer as they relate to the Small Business Program are as follows:

- a. Work collaboratively with the small business specialist, OSDBU, and PCR (if a PCR is assigned to the bureau) during all phases of the acquisition, from planning to contract administration;
- b. Facilitate collaboration among the members of the acquisition planning team, to include the small business specialist and PCR (if a PCR is assigned to the bureau), to devise market research and acquisition strategies to give first consideration for award to socioeconomic small business and small business concerns (set-aside or sole source);
- c. Ensure CD-570, Small Business Set-Aside Review, packages are accurate and complete, and submitted to the small business specialist timely;

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- d. Ensure contract action reports for awards made to socioeconomic small business and small business concerns are accurately entered into FPDS-NG;
- e. Ensure Individual Subcontracting Reports (ISR) and Summary Subcontracting Reports (SSR) for Commercial Item Subcontracts filed by contactors in the Electronic Subcontracting Reporting System (eSRS) are timely acknowledged and reports are accurate;
- f. Prepare J&A for contracts in excess of \$22 million intended for award on a sole-source basis to an 8(a) firm;
- g. Prepare justification documentation for rejection of recommendation from the small business specialist, OSDBU, or PCR (or appropriate SBA Office of Government Contracting Area Office if a PCR is not assigned to the bureau); and
- h. Ensure small business prime contractors and subcontractors are paid timely and in accordance with the terms and conditions of the contract.

### 1.4.6 Small Business Specialist

The small business specialist is appointed only by the OSDBU Director. The qualifications, duties, and responsibilities of the small business specialist are as follows:

- a. Qualifications for serving as the small business specialist shall include experience as a federal contracts specialist, contracting officer, administrative contracting officer, contracts administrator, procurement analyst, small business specialist, small business technical adviser, or individual whose primary responsibilities were for the functions and duties of 15 USC section 637, 644, or 657q;
- b. Perform the duties of the small business technical adviser to provide assistance to the PCR, if a PCR has been assigned to the bureau, to help resolve issues raised by the PCR and ensure required documentation is provided to the PCR timely;
- c. Engage in continuous research on the functions and responsibilities of program line and staff offices to maintain knowledge and familiarity with the types of supplies or services that may be purchased by the bureau offices;
- d. Work closely with the BPO to develop and implement broad strategies to increase the utilization of socioeconomic small business and small business concerns and achieve prime and subcontracting goals in all categories;

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- e. Work closely with the OSDDBU staff and other small business specialists to support the DOC Small Business Program by: participating in the development of small business acquisition policies; performing analytical research; attending DOC Small Business Specialists Council meetings; Acquisition Council meetings; and interagency meetings related to the Small Business Program; hosting and/or organizing bureau small business conferences; and participating in small business outreach events hosted by other federal agencies and associations;
- f. Collaborate with contracting officers and acquisition planning teams as an expert in small business contracting rules, providing assistance with devising market research and acquisition strategies, and making recommendations to improve small business access to information and competition;
- g. Monitor bureau-level acquisition activities by inserting him/herself in the acquisition process to:
  - 1. Recommend alternative strategies to avoid unnecessary bundling and consolidation;
  - 2. Take action to increase the utilization of socioeconomic small business and small business concerns at the prime and subcontracting levels and achieve bureau goals;
  - 3. Resolve complaints submitted by socioeconomic small business and small business concerns of unduly restrictive market research notices and solicitations;
  - 4. Assist socioeconomic small business and small business concerns in obtaining payments under their contracts or subcontracts, late payment, or interest penalties; and
  - 5. Ensure unsolicited proposals submitted by socioeconomic small business and small business concerns receive due consideration in accordance with policies and procedures of the bureau procurement office;
- h. Review CD-570, Small Business Set-Aside Review packages for approval or rejection with recommendations;
- i. Provide workforce training on the Small Business Program, including SBA regulations (13 CFR), FAR, and DOC policies, procedures, and practices;
- j. Provide technical support and counseling to socioeconomic small business and small business concerns on how to pursue contracting opportunities with the bureau or the Department and facilitate meetings on behalf of small business concerns with contracting officers and program officials; and

- k. Assist small business concerns, prime and subcontractor, to obtain payments, late payment interest penalties, or information regarding payments;

### **1.4.7 Program Official**

The duties and responsibilities of the program official are as follows:

- a. Work collaboratively with the BPO, small business specialist, and other bureau procurement office personnel as required to develop and maintain an accurate two-year forecast for socioeconomic small business and small business contracting opportunities;
- b. Execute advance acquisition plans to provide sufficient information to assist the bureau procurement office personnel, including the small business specialist and contracting officers, to develop an appropriate acquisition strategy that maximizes utilization of socioeconomic small business and small business concerns;
- c. Conduct market research and meet with socioeconomic small business and small business concerns, in an open forum or one-on-one, to exchange meaningful information about specific acquisitions;
- d. Ensure requisition packages are complete and submitted to the bureau procurement office in a timely fashion;
- e. Ensure descriptive requirements documentation are not unduly restrictive and thereby hinder the contracting officer's efforts to attain small business participation or preclude setting-aside the acquisition;
- f. Work collaboratively with the contracting officer and small business specialist to develop acquisition strategies, bundling or consolidation analysis, and CD-570, Small Business Set-Aside Review support documentation; and
- g. Participate in DOC-sponsored and bureau-sponsored small business outreach conferences.

**END OF SECTION 1**

## **SECTION 2 – MAXIMIZING SMALL BUSINESS UTILIZATION**

### **2.1 Background**

DOC is committed to maximizing the utilization of socioeconomic small business and small business concerns. Instrumental to maximum utilization of socioeconomic small business and small business concerns is effective acquisition planning to identify opportunities and potential opportunities suitable for award to small businesses.

### **2.2 Forecast of Contract Opportunities**

The Act requires executive agencies to prepare and keep an updated forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that socioeconomic small business and small business concerns are capable of performing.

The BPO shall develop and maintain a two-year forecast of acquisitions for the benefit maximizing small business participation and making small business concerns aware of prime and subcontract opportunities that satisfies the requirement of 15 USC § 637(a)(12). The BPO shall:

- a. Facilitate regular collaboration between contracting and program office personnel, to include the small business specialist, to work cooperatively to develop and maintain a two-year forecast;
- b. Make the forecast available to small business concerns; and
- c. Ensure that the forecast data is accurate and kept current.

Reference CAM 1307.1, Acquisition Planning, Section 3.4 Annual Data Call, for further instructions to develop and submit small business forecasts.

### **2.3 Definitions**

For planning purposes, acquisitions are classified based on the following categories:

- a. New requirement –

A requirement that has not been previously procured by the bureau or by another contracting office acting on behalf of the bureau, and the requirement is not related to

the purpose or scope of any existing contract or contract that ended within the past 12 months;

b. Existing requirement –

- (i) A requirement that may have absorbed some part or parts of an existing contract or a contract that ended within the past 12 months. However, see section 10 – Bundling and section 11 – Consolidation of this chapter, if applicable.
- (ii) Re-compete – A reoccurring or repetitive requirement that is currently being met under an existing contract or order, or under a contract or order that ended within the past 12 months. The requirement may have been altered or modified prior to re-competition. However, the changes or modifications did not cause a change in the purpose of the acquisition.

## 2.4 Annual Acquisition Planning

Planning is required for all acquisitions, regardless of dollar value, and shall be used to identify new opportunities and preserve existing opportunities that have previously been placed in the Small Business Program (i.e., acquisitions awarded using FAR part 19 procedures).

- a. The small business specialist should continuously review the bureau's two-year forecast of contract opportunities to identify new requirements that are amendable to set-aside for socioeconomic small business or small business concerns or sole source award to a socioeconomic concern, and track these actions to ensure the requirements are placed in the Small Business Program.
- b. Any planned acquisition identified in the forecast by the program office as not suitable for a socioeconomic small business or small business contract, set-aside or sole source, shall be further investigated through market research to determine the extent of socioeconomic small business and small business participation at the prime and subcontracting levels. These types of acquisitions should be assigned as early as practicable to the contracting officer to ensure adequate time is available to conduct market research that specifically targets socioeconomic small business and small business concerns to develop and support an appropriate acquisition strategy that maximizes small business utilization.

## 2.5 Procurement-Specific Acquisition Planning

Acquisition planning, which includes market research, is a collaborative effort by key personnel who are responsible for various aspects of the acquisition, such as the contracting officer, small business specialist, and technical personnel, and used to determine the feasibility of the requirement, extent of small business participation, and acquisition approach.

Acquisition planning is required for every planned contract or order; however, the extent of planning will vary depending on the size and complexity of the acquisition, and whether the acquisition is for a new, re-compete, or follow-on requirement.

### 2.5.1 Feasibility of Requirement

The contracting officer and acquisition planning team shall determine if the requirement can be met by a commercial product, service, or solution. If the requirement cannot be met commercially, the acquisition planning team shall determine suitability of nondevelopmental items, including with minor modifications, to meet the requirement. (Nondevelopmental are items developed to meet the exclusive purpose of a Federal agency). If the requirement is for services or a solution, the team shall determine if industry possesses the necessary capability, resources, knowledge, experience, and past performance to meet the requirement.

### 2.5.2 Extent of Small Business Participation

Acquisitions valued above the micro-purchase threshold and up to the simplified acquisition threshold (SAT) are automatically reserved for small business award and must be set-aside. Acquisitions valued above the SAT are required to be set-aside if there is reasonable expectation of receiving offers from at least two responsible concerns.

A set-aside determination is based on the following criteria:

The results of recent market research demonstrate there is a reasonable expectation that offers will be received from at least two responsible small business concerns that can meet the requirement (reference FAR 19.5); or

Historically, acquisitions for the requirement and/or similar requirements have been awarded to a socioeconomic small business or small business concern;

During acquisition planning and market research, the contracting officer shall not attempt to make a responsibility determination of small businesses, such as compliance with the limitation on subcontracting, before deciding to set-aside an acquisition. Responsibility determination is not part of the set-aside determination.

If the contracting officer and acquisition planning team determine the acquisition cannot be awarded as a socioeconomic set-aside or small business set-aside, then the contracting officer must submit a CD-570, Small Business Set-Aside Review, package to the small business specialist supported by market research conducted within the past 12 months, or for task/delivery orders within the past 18 months, from the date the CD-570, Small Business Set-Aside Review, is received by the small business specialist.

### **2.5.3 Acquisition Approach**

The contracting officer and acquisition planning team shall determine the most suitable acquisition approach for the requirement, including contract type, terms and conditions, and acquisition schedules. An acquisition strategy that involves bundling, substantial bundling, or consolidation must be supported by analysis and market research that demonstrates the approach is necessary, justified, and that all statutory requirements for such a strategy have been met.

## **2.6 Market Research**

The contracting officer and acquisition planning team shall conduct market research specific to the requirement and to the maximum extent practicable as part of the acquisition planning process.

For guidance on how to conduct market research, proceed to Chapter Two, Market Research.

**END OF SECTION 2**

## **SECTION 3 – SET-ASIDE FOR SMALL BUSINESS INCLUDING SOCIOECONOMIC SET-ASIDES**

### **3.1. Background**

The Act, FAR, and 13 CFR establish the requirement that certain acquisitions must be set-aside exclusively for participation by small businesses, including socioeconomic concerns, to ensure small businesses are awarded a fair proportion of Government contracts. To promote the use of small business concerns as prime contractors and assist in meeting small business goals, contracting officers and acquisition planners shall utilize small business contracting mechanisms specified in FAR part 19, regardless of place of performance.

### **3.2 Acquisition Thresholds**

The applicable thresholds are defined in FAR subpart 19.5.

### **3.3 Acquisitions at or Below the Micro-Purchase Threshold**

The purchaser (which includes contracting officers, purchasing agents, and purchase card holders) shall first consider award to a small business concern, to include SDVOSB, VOSB, HUBZone, 8(a), SDB, and WOSB, for acquisitions that do not exceed the micro-purchase threshold. If the purchaser decides to compete the acquisition, then the purchaser shall first consider a set-aside competition for any of the small business concerns identified in FAR 19.000(a)(3). The purchaser may seek the assistance of the small business specialist if he or she is unable to locate small businesses that can meet the requirement. If the acquisition cannot be met by a small business, the purchaser shall document the file appropriately (see CAM 1313.301).

### **3.4 Set-Asides of Acquisitions Above the Micro-Purchase Threshold and Below the Simplified Acquisition Threshold (SAT)**

Acquisitions for supplies and services with an estimated total value above the micro-purchase threshold and up to SAT are automatically reserved exclusively for small business award, whether procured through open market, Federal Supply Schedule (FSS), or Government-wide Acquisition Contract (GWAC).

- a. The contracting officer, purchasing agent, and acquisition planning team should consider competition or sole source among one of the socioeconomic categories identified in FAR 19.000(a)(3), before setting-aside the acquisition for small business concerns.

1) Set-Aside Award

- (a) The contracting officer, purchasing agent, and acquisition planning team shall conduct market research to make socioeconomic small business and small business concerns aware of the acquisition opportunity, provide access to acquisition information, and increase the likelihood of receiving offers from qualified small business concerns.
- (b) If, based on current market research, the contracting officer, purchasing agent, and acquisition planning team have reason to believe that offers from two socioeconomic small business or small business concerns may not be received if the requirement was conducted as a total set-aside, the contracting officer, purchasing agent, and acquisition planning team shall consult with the small business specialist and consider sole source award to one of the socioeconomic categories.

2) Socioeconomic Sole-Source Award

The contracting officer should consider sole source award to an 8(a) firm, SDVOSB, EDWOSB, or WOSB, before proceeding with a small business set-aside when a single award is contemplated and it has been determined, based on current market research, that there is a reasonable expectation that offers would not be received from two or more concerns in the same socioeconomic category.

FAR 19.1306 does not allow sole source awards to HUBZone firms at or below the simplified acquisition threshold.

Although the FAR requires the consideration of a socioeconomic sole-source award before proceeding with a small business set-aside, the contracting officer must prepare a J&A to support the sole-source decision (see FAR 13.106-1; 13.501; and 6.303-2). This is because the Act authorizes sole source awards for SDVOSB, EDWOSB, and WOSB under the WOSB Program, but does not expressly require the contracting officer to award sole source contracts. A J&A is not required for sole source contracts under the SBA 8(a) Program unless the total acquisition value is above \$22 million.

- b. If the contracting officer or purchasing agent determines, based on current market research, that the requirement cannot be met by socioeconomic small business or small business concerns, as a total set-aside or sole source, the contracting officer or purchasing agent shall document the determination and submit the documentation, along with a signed CD-570, Small Business Set-Aside Review, to the small business specialist to request approval to proceed with an acquisition strategy outside of the Small Business Program (e.g., full and open competition).
- c. DOC employees who are purchase card holders and have a single purchase limitation above the micro-purchase threshold shall comply with this section.

### **3.5 Set-Asides of Acquisitions Above the Simplified Acquisition Threshold**

The contracting officer and acquisition planning team shall first consider if the requirement can be met by one of the socioeconomic small business categories, competitive or sole source, before considering a small business set-aside. Small business set-aside takes precedence over partial set-aside, full and open competition, and full and open competition with small business reserve. The contracting officer's set-aside determination shall be based primarily on current market research but may also rely on relevant acquisition history.

If the requirement cannot be totally set-aside but can be divided into smaller components or discrete categories, the contracting officer and acquisition planning team shall consult with the small business specialist and consider the suitability of proceeding with a partial set-aside.

The contracting officer shall submit a signed CD-570, Small Business Set-Aside Review, to the small business specialist prior to releasing the solicitation for all acquisitions. The CD-570 shall include market research results and other supporting documentation and analysis. If the small business specialist rejects the contracting officer's decision to not set-aside the acquisition (total or partial), the small business specialist will provide written explanation and may provide a recommendation for an alternative strategy. The contracting officer and acquisition planning team shall work cooperatively with the small business specialist to address concerns or devise an alternative acquisition approach. If the small business specialist agrees with the contracting officer's decision to not set-aside the acquisition, the small business specialist will approve the CD-570 package and forward to the PCR (if a PCR is assigned to the bureau) and OSDBU for review and approval.

### 3.6 Socioeconomic Sole-Source Award

The contracting officer and acquisition planning team shall consider a contract award to a concern under one of the socioeconomic categories on a sole-source basis before proceeding with a small business set-aside when a single award is contemplated and it has been determined, based on current market research, that there is a reasonable expectation that offers would not be received from two or more concerns in the same socioeconomic category. However, see FAR part 19 for the conditions which allow sole-source awards.

Although the FAR requires the consideration of a socioeconomic sole-source contract before proceeding with a small business set-aside, the contracting officer must prepare a J&A to support the sole-source decision. This is because the Act authorizes sole source contracts for HUBZone, SDVOSB, EDWOSB, and WOSB under the WOSB Program, but does not expressly require the contracting officer to award sole source contracts. A J&A is not required for sole source contracts under the SBA 8(a) Program unless the total acquisition value is above \$22 million.

### 3.7 Contract File Documentation

The contracting officer shall be responsible for documenting the file on small business contracting actions, such as—

- a. Market Research - describe the methodology and results (reference FAR 10.002(e));
- b. Set-Aside Determination –
  - 1) Provide the basis for not setting-aside the acquisition or making a sole source award for any of the categories identified in FAR 19.000;
  - 2) Provide the basis for not setting-aside the acquisition or making a sole source award for a contract where performance will take place entirely outside the U.S. and its territories when discretionary authority to apply FAR part 19 could have been used.
  - 3) Provide the basis for not setting-aside a Multiple Award Contract (MAC) when the requirement for set-aside has been met (i.e., “Rule of 2”).

c. Set-Aside Review –

- 1) Provide the basis for not following the recommended alternative procurement methods made by the small business specialist or OSDBU Director.
- 2) Provide the basis for not following the recommended alternative procurement methods made by the PCR. (Also see Section 15 - *Rejecting SBA Recommendation*).

d. Authority of section 1331 of Public Law 111-240 (Small Business Jobs Act):

- 1) Provide the basis for not using the authority of section 1331 to partially set-aside a MAC when a total set-aside is not possible, the requirement can be broken into smaller discrete portions or categories, and based on market research the requirement for set-aside has been met on the set-aside part(s) of the requirement.
- 2) Provide the basis for not using the authority of section 1331 to conduct full and open competition with small business reserve when total set-aside and partial set-aside are not possible, and market research shows that either at least two small business concerns can perform part(s) of the requirement or at least one small business concern can perform all of the requirement.
- 3) Provide the basis for not using the authority of section 1331 to set-aside orders when the requirement for set-aside is met.

**END OF SECTION 3**

## **SECTION 4 - THE SMALL BUSINESS 8(a) PROGRAM**

### **4.1 Background**

The 8(a) Business Development Program was established by Congress to help small disadvantaged business concerns gain access to contract opportunities in the Federal sector. Under the Program, the SBA is the prime contractor and the 8(a) firm is the subcontractor to SBA. SBA certifies to agencies that as the prime contractor, it will be responsible for ensuring performance of the contract. The Program authorizes the use of all types of contracts regardless of place of performance.

### **4.2 8(a) Partnership Agreement**

DOC has an inter-agency [Partnership Agreement](#) (PA) with SBA that delegates contract execution and administration functions to DOC. The PA expedites certain 8(a) Business Development Program and acquisition processes for placing a requirement into the Program and negotiating and executing contracts compared to FAR subpart 19.8, and therefore the PA takes precedence over the FAR.

When awarding 8(a) contracts or purchase orders, the contracting officer shall proceed in accordance with the terms of the PA and work closely with the small business specialist and the PCR (if a PCR is assigned to the bureau) to plan an acquisition that fully utilizes the streamlined procedures. In addition, under the PA the contracting officer shall provide a copy of the offer letter to the small business specialist prior to submitting letter to the appropriate [SBA district office](#).

### **4.3 Acquisition Thresholds**

The sole source and competitive thresholds are defined in FAR subpart 19.8

### **4.4 Release of Requirement from the 8(a) Business Development Program**

#### **4.4.1 Applicability**

An expansion, contraction, or modification to an existing requirement that is currently in the Program is not automatically considered a new requirement or no longer suitable for the Program. In such cases, the contracting officer and acquisition planning team shall consult with the small business specialist, PCR (if a PCR is assigned to the bureau), and the SBA business opportunity specialist (BOS) assigned to the incumbent 8(a) contractor to determine whether the magnitude of change is significant enough to cause a price adjustment of at least 25%,

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requires significant additional or different types of capabilities or work, or if the requirement continues to be suitable for the 8(a) Business Development Program.

SBA will release a requirement from the 8(a) Business Development Program only where the bureau procurement office agrees to procure the requirement under another socioeconomic small business program (i.e., HUBZone, WOSB, or SDVOSB) or, under certain circumstances, so that the acquisition can be conducted as a small business set-aside. Therefore, the contracting officer and acquisition planning team, which includes the small business specialist, shall conduct market research among socioeconomic small business and small business concerns to determine the appropriate set-aside category that will best meet programmatic needs and goal fulfillment.

The contracting officer need not request release from the Program for:

- a. Requirements that are not repetitive or reoccurring (i.e., single one-time procurement);
- b. Requirements that do not have a follow-on component (i.e., once the requirement has been fulfilled, there is no further work); and
- c. Task/delivery orders placed against a MAC when the MAC itself was set-aside for exclusive competition among 8(a) concerns.

### 4.4.2 Procedures to Request Release

When it is deemed to be in the government's best interest, the contracting officer shall submit a written request to SBA to release the requirement from the Program in accordance with the PA instructions. Prior to submitting such request, the contracting officer shall prepare a written explanation for such action and attain approval from their supervisor, the small business specialist, and OSDDBU. Approval shall be based on such factors as:

- a. SDB and 8(a) goal performance at the bureau level;
- b. Continued suitability of the requirement to remain in the 8(a) Business Development Program;
- c. Suitability for placement of the acquisition in another socioeconomic program (HUBZone, WOSB, or SDVOSB) or award as a small business contract; and
- d. Programmatic needs.

There is no regulatory time period in which SBA is required to provide the contracting officer with a decision to the request for release.

## **4.5 Sole Source Acquisitions**

### **4.5.1 Informal Assessment and Nomination**

The contracting officer, in cooperation with the acquisition planners, is encouraged to identify and nominate an 8(a) firm to SBA based on the firm's technical capabilities and capacity to perform the contract.

The contracting officer and acquisition planners may conduct informal assessments of several 8(a) firms which may include one-on-one interviews and reviews of corporate capability statements. An informal assessment considers a firm's experience, past performance, and expertise in the industry or technical area of the planned acquisition.

The contracting officer cannot release the statement of work to any of the 8(a) firms being assessed. However, the contracting officer may provide the 8(a) firms with a synopsis of the requirement describing the type of work involved; list of objectives; background information about the agency, program, and acquisition history as appropriate; place of performance; and NAICS code.

The contracting officer and acquisition planners must avoid making meaningful comparison and discrimination between and among the 8(a) firms selected for participation in the informal assessment. The contracting officer cannot discuss cost and price with 8(a) firms being assessed.

For acquisitions below the competition threshold, the contracting officer may not conduct formal technical evaluations, except for requirements for architectural and engineering services. If an acquisition valued below the 8(a) competitive threshold requires formal technical evaluations of more than one 8(a) firm, the contracting officer must request and obtain SBA's authorization to conduct a competitive procurement. (Reference FAR 19.805-1(d) and 13 CFR 124.503).

### **4.5.2 8(a) Offer and Acceptance**

Upon completion of the informal assessment, the contracting officer and acquisition planners must select the most suitable 8(a) firm for nomination based on the firm's technical capabilities and capacity to perform the contract. The contracting officer is required to submit an agency offering letter to SBA to request that the acquisition requirement be accepted into the 8(a) Program and nominate the 8(a) firm following the procedures outlined in the PA.

If the contracting officer nominates an 8(a) joint venture, SBA will conduct an eligibility determination of the lead 8(a) member of the joint venture as part of its acceptance

procedures. SBA's approval of the joint venture agreement may or may not take place concurrently with the eligibility determination. However, the contracting officer must receive SBA's approval of the joint venture agreement prior to award. (Reference 13 CFR 124.503).

### **4.5.3 Sole Source Acquisitions Above the Competitive Threshold**

Normally, SBA requires agencies to compete acquisition requirements that have been placed in the 8(a) Program when the estimated contract value is above the sole source threshold. However, the contracting officer may offer the requirement to SBA on a sole source basis if—

- a. Recent market research demonstrates that there is reasonable expectation of not receiving offers from at least two eligible and responsible 8(a) participants; or
- b. The nominated 8(a) participant is owned by an Indian tribe or an Alaska Native Corporation.

The contracting officer is required to follow the offer and acceptance procedures for sole source acquisitions in accordance with the PA. The contracting officer is not required to prepare a J&A unless the acquisition value exceeds \$22 million, including options.

#### **4.5.3.1 Sole Source Awards Over \$22 Million**

The contracting officer shall prepare a J&A for any contemplated sole source acquisition that exceeds \$22 million which cites the reason for pursuing award on a sole source basis rather than a competitive basis. (Reference FAR 6.303 and 19.808-1).

The required elements of the J&A are described in the PA. The J&A shall not contain any contractor proprietary data or exemptions to disclosure of information contained in the Freedom of Information Act. If the J&A appears to contain proprietary data, the contracting officer shall provide the contractor an opportunity to review the J&A before making it available for public inspection. This process must not prevent or delay the posting of the J&A in accordance with the required timeframes.

The contracting officer shall:

- a. Include the J&A with the CD-570, Small Business Set-Aside Review and submit to the small business specialist, OSDBU, and PCR (if a PCR is assigned to the bureau) for review and approval;

- b. Submit the J&A and approved CD-570 to the SPE for review and approval via the OAM mailbox at: [OAM\\_Mailbox@doc.gov](mailto:OAM_Mailbox@doc.gov).
- c. Include an approved J&A with the offer letter to SBA.

The contracting officer shall post the approved J&A and related information on FBO.gov and provide to OAM to post on it's website at: <http://www.osec.doc.gov/oam/>. The contracting officer shall complete this action within 14 days after award and the justification shall remain posted for a minimum of 30 days.

#### **4.5.4 Competitive Acquisitions**

The contracting officer may set-aside an acquisition for competition by and among 8(a) firms above the competitive threshold when there is a reasonable expectation, based on current market research, that at least two eligible 8(a) firms will submit offers at market prices. The contracting office shall complete the offer and acceptance procedure with SBA prior to the issuance of the solicitation.

##### **4.5.4.1 Set-Aside of MACs with 8(a) Orders**

If the MAC is set-aside for exclusive competition among 8(a) contractors, then the order level procedures are as follows—

- a. Competitive Orders

Task or delivery orders valued above the competition threshold must be available for competition among all 8(a) contract holders. The contracting officer need not follow the offer and acceptance procedures for an individual task or delivery order because—

- 1) The MAC has been accepted by SBA into the 8(a) Program and therefore it is not necessary to offer individual task or delivery orders into the Program;
- 2) SBA has performed an eligibility verification of the apparent successful offerors prior to contract award;
- 3) SBA has approved any Mentor-Protégé Joint Venture agreements of the apparent successful offerors prior to contract award; and
- 4) SBA's acceptance of the MAC is valid for the term of the contract.

b. Sole Source Orders

The contracting officer may issue a task or delivery order on a sole source basis if the acquisition value is below the competitive threshold. If the value of the sole source award is at the competitive threshold, the contracting officer must follow the offer and acceptance procedures in accordance with the PA.

c. Participant Graduates from the 8(a) Program

An 8(a) contractor can continue to accept new orders under the MAC and DOC will continue to receive credit toward prime contracting SDB and 8(a) goals even if the 8(a) contractor graduates from the 8(a) Program or has grown to be other than small for the NAICS code assigned to the contract. However, if the 8(a) contractor is required to rerepresent its size as other than small for the NAICS code assigned to the MAC, DOC will not receive credit for subsequent orders or existing orders that are modified for whatever reason after the date of the rerepresentation.

#### **4.5.4.2 Full and Open Competition of MACs with 8(a) Orders**

If the MAC is awarded under full and open competition procedures, then the order level procedures are as follows—

a. Competitive Orders

The contracting officer is required to follow the order level procedures in accordance with the PA for the order to be considered an 8(a) award. The order level procedures are as follows —

- a. The task or delivery order must be offered to and accepted into the 8(a) Program;
- b. The task or delivery order must be competed exclusively among 8(a) contractors; and
- c. SBA must perform an eligibility determination prior to award of the task or delivery order.

b. Sole Source Orders

Sole source awards are prohibited unless the contracting officer receives SBA's approval.

## 4.6 8(a) Joint Venture and Mentor-Protégé

The contracting officer must give fair consideration to an 8(a) Joint Venture (JV) or Mentor-Protégé JV when contemplating a sole source or competitive award.

### 4.6.1 Mentor-Protégé Joint Venture

- a. The purpose of the mentor-protégé arrangement is to enhance the capabilities of the 8a protégé and improve its ability to compete for contracts. The mentor may provide technical, management, or financial assistance. The mentor-protégé may form a joint venture (JV) as a small business and pursue prime and subcontract requirements. An 8(a) protégé may enter into a Mentor-Protégé agreement and JV agreement with one or more socioeconomic small business, small business, or large business concerns. (Reference 13 CFR 124.513 and 124.520);

SBA considers the Mentor-Protégé JV a small business concern if:

- 1) The 8(a) protégé meets the size standard for the NAICS code identified in the solicitation, is the managing member of the JV, and its employee is the project manager responsible for performance of the contract;
  - 2) The 8(a) member(s) of the JV perform at least 40% of the total work performed by the JV entity; and
  - 3) The JV adheres to the Limitations on Subcontracting (reference 52.219-14).
- b. 8(a) Protégé's Responsibility
    - 1) The 8(a) protégé may submit the mentor-protégé agreement to SBA for approval at any time. However, SBA must approve the mentor-protégé agreement before the mentor-protégé can submit an offer as a JV in order to receive an exclusion from affiliation.
    - 2) The 8(a) protégé may submit the JV agreement to SBA for approval at any time, whether or not in connection with a specific 8(a) procurement. If SBA approves the JV without a corresponding 8a contract, then the 8(a) protégé must submit an addendum to the JV agreement that covers a specific contract to SBA for approval prior to award.

c. Contracting Officer's Responsibility

Prior to award, the contracting officer shall submit the apparent winner to SBA for an eligibility determination. Concurrently, SBA will review and approve the JV agreement or addendum to the JV agreement. The contracting officer shall not proceed with award until SBA completes the eligibility determination and approves the JV agreement.

The contracting officer shall execute the 8(a) mentor-protégé JV contract in the name of the JV entity or the 8(a) participant.

#### **4.6.2 Joint Venture**

An 8(a) participant may enter into a JV agreement with one or more small business concerns, including HUBZone, SDB, 8(a), WOSB, VOSB, and SDVOSB, for the purpose of performing an 8(a) contract. SBA refers to these types of arrangements as "all small business JV." Unlike the Mentor-Protégé JV, each member of the all small business JV must meet the size standard for the NAICS code identified in the solicitation.

For all small business JV, SBA does not approve the JV or the JV agreement.

**END OF SECTION 4**

## SECTION 5 – MULTIPLE AWARD CONTRACTS

### 5.1 Background

FAR subpart 16.5 requires the contracting officer to give preference to making multiple awards to two or more sources when contemplating indefinite-quantity contracts for the same or similar supplies or services. Concurrently, the contracting officer shall apply the “rule of two” to determine the suitability of setting aside such acquisitions.

### 5.2 Multiple Award Contracts Awarded by DOC Bureau Procurement Offices

Contracting officers and acquisition planners are required to use DOC enterprise strategic sourcing vehicles. Please visit the [Enterprise Services Portal](#).

#### 5.2.1 Total Set-Aside

- a. Acquisitions with a total value above the micro-purchase threshold and up to the Simplified Acquisition Threshold (SAT).

Acquisitions at this threshold are automatically reserved for small businesses. The contracting officer and acquisition planning team should first consider setting aside a MAC for competition among socioeconomic small business concerns, including 8(a), HUBZone, SDVOSB, EDWOSB, and WOSB under the WOSB Program, before considering a small business set-aside. The contracting officer and acquisition planning team shall rely on recent market research to determine if a socioeconomic set-aside is suitable.

- b. Acquisitions valued above the SAT.

For acquisitions at this threshold, the contracting officer shall first consider setting aside the MAC for competition by and among socioeconomic small business concerns, including 8(a), HUBZone, SDVOSB, EDWOSB, and WOSB under the WOSB Program, before considering a small business set-aside. Total set-aside takes precedence over partial set-aside, full and open competition, and full and open competition with small business reserve.

The contracting officer shall conduct market research to determine if the requirement for set-aside has been met. During market research, it is not required that potential small business contractors demonstrate capability to perform every requirement or task of the planned contract. Additionally, an awardee need not be capable of performing every requirement or task as well as any other awardee under the contract.

### **5.2.2 Partial Set-Aside**

When market research indicates that a total set-aside is not possible because of the unlikelihood of obtaining offers from at least two small business concerns, then the contracting officer shall consider partial set-aside. Partial set-aside takes precedence over full and open competition or full and open competition with small business reserve.

If the requirement can be separated into smaller discrete portions or categories, and based on market research, two or more small business concerns, including 8(a), HUBZone, SDVOSB, EDWOSB and WOSB under the WOSB Program, are expected to submit an offer on the set-aside part(s) of the requirement, the contracting officer shall issue the solicitation as a small business partial set-aside, 8(a) partial set-aside, HUBZone partial set-aside, SDVOSB partial set-aside, EDWOSB partial set-aside, or WOSB partial set-aside under the WOSB Program. At the discretion of the small business concern, it may submit an offer on the set-aside portion, non-set-aside portion, or both.

The contracting officer is required to submit form CD-570, Small Business Set-Aside Review, to the small business specialist for approval. Depending on the total dollar value of the acquisition, the CD-570 shall also be reviewed and approved by the PCR (if a PCR has been assigned to the bureau) and OSDBU.

### **5.2.3 Full and Open Competition with Small Business Reserve**

When market research indicates that a total set-aside is not possible because of the likelihood of not receiving offers from at least two qualified small business concerns and it is not feasible to divide the requirement into smaller discrete parts to allow partial set-aside, then the contracting officer shall consider the use of full and open competition with small business reserve. The type of small business reserve (i.e., small business, 8(a), HUBZone, SDVOSB, EDWOSB, or WOSB under the WOSB Program) shall be based on the results of market research conducted specifically for the acquisition and in consultation with the small business specialist who shall consider the bureau's goal achievement performance.

The contracting officer shall include the provision in the solicitation to conduct set-asides or directed buys at the order level for any of the small business concerns identified in FAR 19.000(a)(3).

The reserve may result in one or more contract awards to any one or more types of small business categories.

### 5.2.3.1 Order Set-Aside

The contracting officer shall set-aside orders for any of the small business concerns identified in FAR 19.000(a)(3) when there are two or more contract awards for that type of small business concern (small business, HUBZone, SDVOSB, 8(a), EDWOSB, and WOSB under the WOSB Program). The contracting officer may use discretion to issue orders directly to one small business concern for work that it can perform when there is only one contract award to any one type of small business concern. (A J&A is not required for a directed award). The contracting officer has the discretion to determine the type of set-aside that will be used at the order level. (Reference section 1331 of the Small Business Jobs Act of 2010 (15 U.S.C. 644(r)(2)). For GSA FSS orders, see section 5.3.2; for 8(a) orders, see section 4.5.4.2.

- a. The contracting officer shall first consider setting aside the order for one of the socioeconomic categories before considering small business set-aside. Small Business set-aside takes precedence over competition among all contract holders.
- b. The contracting officer has the discretion to combine the “rule of two” with other methodology to increase the utilization of small business contractors such as—
  - 1) Establish a minimum total dollar value or a percent of total contract obligation amount to be awarded to small business contract holders.
  - 2) Reserve certain task or delivery orders based on dollar value, NAICS code, place of performance, nature of the work, or other criteria for small business contract holders.
- c. The contracting officer’s decision to not set-aside an order shall be based on market research conducted among contract holders that included an opportunity for the contract holders to participate (i.e., meaningful exchange of information between contract holders and acquisition planning team).
- d. A justification for an exception to fair opportunity when setting-aside an order or issuing an order directly to a small business concern is not required (reference FAR 16.505(b)(2)(i)(F)). However, the contracting officer shall submit documentation with the CD-570, Small Business Set-Aside Review, to explain why an order was not set-aside when the authority and opportunity to do so could have been used. (See 13 CFR 125.2(e)(iii)).
- e. The contracting officer shall submit a signed CD-570, Small Business Set-Aside Review, along with supporting documentation to the small business specialist, PCR (if a PCR is assigned to the bureau), and OSDBU for review and approval.

### 5.2.3.2 On-Ramp and Off-Ramp

For multiple award contracts, including Blanket Purchase Agreements (BPA), that were set-aside, total or partial, the contracting officer shall preserve the set-aside for the entire contract period. The contracting officer has the discretion to determine the best method to preserve any set-asides and to provide a mechanism to maintain a sufficient number of small business contractors.

- a. The contracting officer may include an on-ramp provision in the solicitation that allows for replenishing the contractor pool similar to:

“The contracting officer will periodically review the total number of contractors to ensure adequate small business competition is maintained for work orders throughout the period of performance. Over time, the total number of contractors may fluctuate due to various reasons including novation, acquisition, and merger. If the contracting officer determines that it is in the best interest of the Government to replenish the contractor pool with new contractors, the contracting officer has the discretion to determine the optimum way to solicit proposals from industry at any time during the effective period of the contract but no earlier than three years from date of award. Solicitation procedures will be subject to applicable federal procurement laws. Any offeror meeting the size eligibility requirements identified in the new “ramp on” solicitation may submit a proposal in response to the solicitation. However, the contracting officer has the discretion to award more or fewer contracts than the number anticipated in the solicitation depending upon the quality of the offers received.”

*--Excerpt taken from Census solicitation*

- b. The contracting officer may include an off-ramp provision in the solicitation that allows for the removal of contractors that no longer meet the size standard for the NAICS code assigned to the contract because of novation, acquisition, and/or merger. The provision may be worded similarly to:

“A contractor’s business size recertification that occurs simultaneously with the renewal of the underlying GSA Schedule contract, will be the governing business size for the order or BPA. A contractor that is considered other than small as a result of its renewed GSA Schedule contract shall be “ramped off”. If a “ramped off” contractor is currently under contract to perform under any work order, the contractor will be required to continue to perform under the terms of the specific work order. Contractors that are “ramped off” will no longer be eligible to compete for work orders that are issued under order or BPA.”

*--Excerpt taken from Census solicitation*

Other methods to preserve the set-aside may include termination for convenience or not exercising the next option period.

The small business specialist, in consultation with the contracting officer and acquisition team, shall provide advice and guidance on methods to incorporate into the acquisition strategy, solicitation and contract to preserve the intent of the set-aside (total or partial) and small business reserve.

### 5.2.3.3 Off-Ramp Waiver Process

During the performance period for contracts that have been set-aside, partial or total, or reserved, if a contract holder rerepresents their size as other than small, and the contracting officer chooses not to use off-ramp procedures, the contracting officer shall submit a CD-570, Small Business Set-Aside Review, along with a statement to the small business specialist, PCR (if a PCR has been assigned to the bureau), competition advocate, and OSDBU Director explaining why a contractor that rerepresented their size as other than small cannot be moved off the contract through an off-ramp provision or some other provision. The contracting officer's impact statement shall also include at a minimum:

- a. Plans to replenish the contractor pool with additional small business contractors;
- b. Analysis to determine the impact to small business contractors if contractors that rerepresented their size as no longer small are allowed to continue to compete for task/delivery orders.
- c. Analysis to determine whether an adverse impact on achieving the purpose of the contract and/or achieving programmatic objectives if the contractor(s) that rerepresented were not allowed to continue to compete for task/delivery orders.

If either the small business specialist or competition advocate reject the contracting officer's decision not to preclude contractors that rerepresented their size as other than small from competing for task/delivery orders, the contracting officer shall work cooperatively to implement their recommendations.

If the OSDBU Director rejects the contracting officer's decision, the contracting officer shall proceed with the removal of contractor(s) that rerepresented their size as other than small from the contract or otherwise exclude the contractor from participation at the order level.

If the PCR rejects the contracting officer's decision, the contracting officer shall accept the PCR's decision and recommendation, or may appeal (see Section 15 - *Rejecting SBA Recommendation*).

### **5.3 Task and Delivery Orders Issued Against Governmentwide Acquisition Contracts (GWACs) and Federal Supply Schedule Contracts (FSS)**

DOC's policy is to balance the use of streamlined task/delivery order procedures with the statutory requirements to: a) give socioeconomic small business and small business concerns first consideration to meet our contract requirements and b) achieve our socioeconomic and small business goals. Therefore, the contracting officer and acquisition planning team shall first consider setting aside the order for one of the socioeconomic categories before considering small business set-aside. Small business set-aside takes precedence over competition among all contract holders.

The contracting officer has the discretion to require contractors to certify their size and status at the time of offer for the order. This will help ensure that only small businesses will participate in the set-aside. A justification to limit competition to socioeconomic small business and small business concerns is not necessary for use of FSS contracts and GWACs. However, the contracting officer shall submit documentation along with the CD-570, Small Business Set-Aside Review, to explain why an order was not set-aside when the authority and opportunity to do so could have been used. (See 13 CFR 125.2(e)(iii)).

The contracting officer shall submit a signed CD-570, Small Business Set-Aside Review, along with supporting documentation to the small business specialist, PCR (if a PCR is assigned to the bureau), and OSDBU for review and approval.

**END OF SECTION 5**

## SECTION 6 – NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM

### 6.1 Background

The North American Industry Classification System (NAICS) is used to identify industry subsectors such as service, manufacturing, and construction. SBA adopted the use of the NAICS for the Small Business Program to distinguish small business concerns from non- small business concerns. SBA assigned a business size standard, based on number of employees or revenue, to each NAICS code.

Small business concerns are responsible for ensuring that they meet the size standard for the NAICS code assigned to the solicitation. A small business' NAICS code(s) can be found in the [System for Award Management](#).

Contracting officers are responsible for selecting the most suitable NAICS code for the acquisition.

### 6.2 Selecting the Appropriate NAICS Code

The contracting officer, in collaboration with the acquisition planning team, shall assign the NAICS code to the acquisition that best describes its principal purpose. Selection of the appropriate NAICS code may also be based upon the component of the acquisition which accounts for the greatest percentage of contract value.

Every acquisition must be assigned a NAICS code, regardless of whether the acquisition is conducted as a competition or sole source, or whether it is set-aside or unrestricted. The purpose of NAICS code assignment is to:

- a. Provide a brief description of the product or service being procured for statistical purposes.
- b. Determine which firms can compete for acquisitions that have been set-aside based on the size standard associated with the NAICS code.

The contracting officer and acquisition team should use the following tools to help identify the appropriate NAICS code:

- a. [Bureau of the Census NAICS code descriptions](#)
- b. [NAICS Association](#)
- c. [SBA Table of Size Standards](#)

- d. Small business specialist
- e. PCR (if a PCR is assigned to the bureau)

### **6.3 NAICS Code Used For Market Research**

The contracting officer shall use the NAICS code and description which best describes the principal purpose of the acquisition and concurrently identifies the appropriate industry subsector. If the acquisition requires a combination of products, services or multiple items, then the contracting officer shall select the NAICS code based on the component that accounts for the greatest percentage of contract value.

It is understood that during market research, a contracting officer may use multiple NAICS codes in an effort to locate qualified socioeconomic small business and small business concerns in the most appropriate industry subsector. However, the contracting officer shall ensure that the final selection of the NAICS code that will be assigned to the solicitation is timely communicated to socioeconomic small business and small business concerns, especially those concerns that participated in the market research.

For additional guidance on effective market research, read chapter two, *Market Research*.

### **6.4 Corresponding Size Standard**

The contracting officer must use the corresponding size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may at his or her discretion amend the solicitation and use the new size standard.

### **6.5 Small Business Size Status Determination**

#### **6.5.1 Eligibility Determination**

Any acquisition for which status as a small business is required, set-aside or sole source, requires the offeror to meet the size standard for the NAICS code identified in the solicitation as of the date of the initial offer (or other formal response to the solicitation) which includes price, except for HUBZone small business concerns which must meet the size standard at the time of initial offer and again at time of award in order to be eligible for a HUBZone contract.

A concern that qualified as meeting the size standard for the NAICS code identified in the solicitation at the time of initial offer, is considered to be a small business at time of award and throughout the life of the contract. For multiple award contracts, the contractor maintains its size status for each order issued against the contract, except when required to rerepresent its size status for the contract or when, at the discretion of the contracting officer, the contractor is required to certify its size status at the order level.

## 6.5.2 Rerepresentation of Business Size

The small business concern need not rerepresent its size status during the contract period except under the following circumstances:

- a. Novation – Within 30 days of an approved contract novation, the contractor must rerepresent its size status or inform the contracting officer it no longer is small for the NAICS code assigned to the contract.
- b. Merger or Acquisition (where contract novation is not required) – Within 30 days of the transaction becoming final, the contractor must rerepresent its size status or inform the contracting officer it no longer is small for the NAICS code assigned to the contract.
- c. Long-term contract (duration of more than 5 years, including options) – Within 60 to 120 days prior to the end of the 5<sup>th</sup> year of the contract or 60 to 120 days prior to the date specified in the contract for exercising the next option, the contractor must rerepresent its size status or inform the contracting officer it no longer is small for the NAICS code assigned to the contract. (This rule does not apply to contracts that have been extended for a cumulative period beyond 5 years by use of Option to Extend Services (FAR 52.217-8)).
- d. Multiple Award Contract – The contracting officer may exercise discretion to require contractors to include with their offers for a specific task/delivery order a representation that they meet the size standard for the NAICS code.
- e. Agreements, Basic Agreements, Basic Ordering Agreements, and Blanket Purchase Agreements under FAR part 13 – Where the contracting officer sets aside or reserves awards to socioeconomic small business or small business concerns, the concern must meet the size standard for the NAICS code at the time of initial offer (or other formal response to a solicitation) which includes price. However, because the Agreement is not a contract, the concern must also qualify as a small business for each order issued under the Agreement. Therefore, the contracting officer shall require concerns to include with their offers for each order a representation that they meet the size standard for the NAICS code.

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When a contractor is required to rerepresent its size status, the rerepresentation must be based on the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code initially assigned to the contract.

If a contractor rerepresents itself as other than small, the contracting officer shall modify the contract. The contracting officer has the discretion to require the contractor to submit a small business subcontracting plan to cover the remaining contract period, including options. The contracting officer shall change the size status in FPDS-NG. From the effective date of the modification that changed the size status of the contractor, the bureau can no longer count dollars obligated under the contract as small business credit towards the business goal achievement.

See section 5.2.3.2, *On-Ramp and Off-Ramp*, for on/off ramp provisions as well as documentation requirement for not utilizing the off ramp provision for any contractor that rerepresented itself as no longer small for the size standard for the NAICS code assigned to the MAC.

**END OF SECTION 6**

## Section 7 - Similarly Situated Entities and Limitation on Subcontracting

### 7.1 Background

Congress amended the Act by adding rules to ensure that benefits derived from setting-aside acquisitions flow to the intended parties. Socioeconomic small business and small business concerns that are awarded contracts valued above the SAT and that were set-aside or sole source under FAR part 19 procedures are required to perform a certain percentage of the contract.

However, socioeconomic small business and small business prime contractors are allowed to subcontract to similarly situated entities without being penalized under the Limitation on Subcontracting (LOS) rule. The percentage of the contract award amount that the prime contractor spends on similarly situated entity subcontractors is excluded from the LOS calculation.

### 7.2 Definition

- a. Limitation on Subcontracting (LOS) – Sets limits on the amount that socioeconomic small business and small business concerns can spend on subcontractors when the contract is set-aside and has a total value above the SAT.
- b. Similarly situated entity – Identifies a type of prime/contractor teaming arrangement based on the socioeconomic or small business program used to solicit offers (i.e., small business, 8(a), WOSB, HUBZ, or SDVOSB). The first-tier subcontractor must have the same program status that qualified the prime contractor to receive the contract award. The similarly situated entity subcontractor must also meet the size standard for the NAICS code assigned to the prime contract, or that has been assigned to the subcontract by the prime contractor. This rule applies to set-aside and sole-source contracts awarded under FAR part 19.

### **7.3 Application**

Contracts that have been set-aside, total or partial, sole-source, or reserved with a dollar value greater than the SAT, require offerors to limit the amount spent on subcontracting to certain percentages of the amount paid by government, unless the subcontractor(s) are similarly situated. Work performed by similarly situated entities is deemed not to be subcontracted work for purposes of complying with the LOS requirement, and money spent on similarly situated entities at the first tier are excluded from the LOS percentage calculation.

This rule is not applicable to socioeconomic small business and small business concerns that participate in full and open competitions.

At time of evaluation of proposals, the contracting officer shall make a responsibility determination based on the offeror's compliance with LOS.

**END OF SECTION 7**

## **SECTION 8 – NONMANUFACTURER RULE**

### **8.1 Background**

For acquisitions conducted under FAR part 19, a socioeconomic small business or small business concern must provide the end item that it itself manufactured, produced, processed, or assembled. An exception to the performance standard defined under the LOS is the Non-Manufacturer Rule (NMR). The NMR applies to socioeconomic small business and small business concerns responding to a solicitation for manufactured products or supplies that is set-aside, sole source, or reserved. The NMR provides an opportunity for a small business concern that is not the actual manufacturer or processor of the end item to be acquired, to compete by offering the product of another manufacturer.

### **8.2 Small Business Manufacturer**

A small business manufacturer is defined as a concern that manufactures, produces, processes, or assembles the end item, and the end item is manufactured in the U.S. or its outlying areas.

### **8.3 Small Business Non-manufacturer**

A small business non-manufacturer is defined as a supplier, distributor, or value-added reseller that is primarily engaged in the retail or wholesale trade to offer supplies or products manufactured by another manufacturer. (See FAR 19.102).

To qualify as a small business non-manufacturer, a concern—

- a. Cannot exceed 500 employees;
- b. Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and
- c. Will supply the end item of a small business manufacturer, processor, or producer made in the U.S., or obtains a waiver from SBA for the item to be acquired.

## 8.4 Exceptions to the NMR

Acquisitions valued at or below the NMR threshold that have been set-aside for small business, HUBZone, SDVOSB, or 8(a) are exempt from the NMR (see FAR 19.503-2 for threshold). A concern responding to a solicitation for manufactured products or supplies that is set-aside, sole source, or reserved for small business, HUBZone, SDVOSB, or 8(a), may provide the end item that it itself manufactured, produced, processed, or assembled, or if the concern qualifies as a non-manufacturer, it may provide the end item of another U.S. manufacturer regardless of the manufacturer's business size as long as the product or end item is manufactured in the U.S. or its outlying areas. This exemption does not apply to acquisitions set-aside under the WOSB Program.

For an acquisition that has been set-aside, sole source, or reserved under the WOSB Program, an EDWOSB or WOSB must provide an end item that it itself manufactured, produced, processed, or assembled, or if the—

- EDWOSB qualifies as a non-manufacturer, the EDWOSB must provide the end item of another EDWOSB;
- WOSB qualifies as a non-manufacturer, the WOSB must provide the end item of another WOSB.

## 8.5 SBA Waiver to the NMR

SBA may waive the NMR requirement to allow a small business offeror to supply the product of any size business and without regard to the place of manufacture (but see FAR part 25 for applicability of Buy American statute and Trade Agreement Act). If SBA waives the NMR for the item to be acquired, then a small business concern that qualifies as a non-manufacturer may provide the end item of a manufacturer, regardless of the manufacturer's business size and place of manufacture. ([See SBA's class waiver of products](#)). For multiple item acquisitions, if at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns, then a waiver of the NMR is not required.

The SBA waiver process is not applicable to the HUBZone and WOSB programs. For an acquisition that is set-aside, sole source, or reserved under the HUBZone Program, a HUBZone small business may provide the end item that it itself manufactured, produced, processed, or assembled, or if the HUBZone small business qualifies as a non-manufacturer, it may provide the end item of another HUBZone small business manufacturer.

For an acquisition that is set-aside, sole source, or reserved under the WOSB Program, an EDWOSB or WOSB must provide an end item that it itself manufactured, produced, processed, or assembled, or if the—

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- EDWOSB qualifies as a non-manufacturer, the EDWOSB must provide the end item of another EDWOSB;
- WOSB qualifies as a non-manufacturer, the WOSB must provide the end item of another WOSB.

SBA may waive the NMR under two circumstances:

- a. Individual Waiver: The contracting officer may initiate an individual waiver request based on market research and acquisition history, that no small business manufacturer, producer, or processor exist for the item(s) being procured or no small business manufacturer, producer, processor, or kit assembler can reasonably be expected to offer a product meeting the specifications, delivery schedule, performance criteria, and other critical factors required by the solicitation. The contracting officer shall submit the waiver request to the small business specialist for approval prior to submitting the request to SBA.
- b. Class Waiver: The contracting officer may initiate a waiver of a class of products based on analysis of market research and acquisition history that determined no small business manufacturer, producer, processor, or kit assembler for a product or class of products is available to participate in the Federal procurement market. The contracting officer shall submit the waiver request to the small business specialist for approval prior to submitting the request to SBA.

The contracting officer shall:

- a. Use the SBA list of class waivers to determine if a class waiver is applicable to a planned acquisition. The NAICS code, NAICS code description, and Product Service Code (PSC) must match the item(s) being procured. If the item is listed on SBA's class waiver list, then a small business concern can supply the product of any size business without regard to the place of manufacture. However, waivers to the non-manufacturer rule do not apply to acquisitions placed under the HUBZone and WOSB programs.
- b. Notify potential offerors of any waivers, whether class waivers or contract specific waivers, that will be applied to the acquisition. The notification shall be in the solicitation and included in the pre-solicitation notice posted on FBO.gov.

## 8.6 Application of Manufacturing and Supply NAICS Codes

The NMR applies to solicitations for supplies and products for which status as a small business is a requirement or advantage such as total set-aside, partial set-aside, sole source, or full and open competition for multiple award contracts with small business reserve.

The contracting officer shall assign a manufacturing or supply NAICS code to any solicitation for supplies and products, regardless of whether it is awarded using FAR part 19, Small Business Program, or full and open competition.

The NMR also applies to the supply portion of acquisitions under the Information Technology Value Added Resellers (ITVAR) exception to NAICS code 541519 – Other Computer Related Services. ITVAR acquisitions provide a total information technology solution that includes hardware, software, and value-added services. If an ITVAR solicitation is a total set-aside, partial set-aside, or sole source, then:

- a. The offeror must qualify as a small business based on the 150-employee size standard.
- b. The value-added services portion of the acquisition for computers, hardware and software must account for at least 15% and not more than 50% of the total contract price.
- c. The Non-manufacturer Rule applies to the acquisition of products, such as hardware and software, unless SBA has issued an individual or class waiver (see Section 8.5 of this chapter).

If an information technology acquisition consists of less than 15% of value added services, then the ITVAR exception is not applicable and the solicitation must be assigned a manufacturing or supply NAICS code. Likewise, if the information technology acquisition consists of more than 50% of value added services, the ITVAR exception is not applicable and the solicitation must be assigned a NAICS code that best describes the principal service being acquired.

## 8.7 Additional Exceptions to the NMR

The NMR does not apply to:

- a. Acquisitions conducted as full and open competition;
- b. Acquisitions for multiple items when at least 50% of the estimated contract value is for items that are manufactured by small business concerns. (It is not required that each item be manufactured by a small business);

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- c. Acquisitions assigned a NAICS code for services;
  - (i) The rental and lease of item(s) is a service and the acquisition is treated as a service contract.
  - (ii) Acquisitions for services that also include a supply component are not subject to the NMR.
- d. Acquisitions assigned a NAICS code for construction and specialty trade construction; and
- e. Small business subcontractors.

**END OF SECTION 8**

## **Section 9 – TRADE AGREEMENTS**

### **9.1 Buy American Statute**

Socioeconomic small business and small business set-asides are allowed when the Buy American statute is applicable. The Buy American statute requires that, with the exception of commercially available off-the-shelf (COTS) items, end products and other supplies acquired for use in the U.S. must be manufactured in the U.S. and meet the component test (see FAR part 25). The Buy American Statute supersedes any SBA waiver of the NMR which would have allowed a small business offeror, under a set-aside, sole source, or reserve, to supply the product of any size business and without regard to place of manufacture.

For supply acquisitions, if the Buy American statute is applicable, whether the acquisition is set-aside or full and open competition, all offerors shall comply with the requirement to provide a product that passes the component test (i.e., cost of the components made in the U.S. and its outlying areas must account for more than 50% of the total cost of all components). This applies whether the small business offeror is a manufacturer or is providing the product of another manufacturer (but see FAR part 25 for exceptions).

### **9.2 Trade Agreements**

When the Buy American statute is waived because the acquisition is covered by either the World Trade Organization Government Procurement Agreement (WTO GPA), Free Trade Agreements, or the Israeli Trade Act, this allows eligible products from foreign countries to receive equal consideration with domestic offers. The country of origin for the offered product must align with one of the trade agreements (see FAR subpart 25.4) and meet the country of origin test. The test to determine country of origin is “substantial transformation” as in transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article.

Contracting officers cannot set-aside an acquisition if it is covered by FAR subpart 25.4. However, the contracting officer shall conduct market research and take other steps necessary to garner maximum participation by small business concerns, regardless of place of performance.

**END OF SECTION 9**

## SECTION 10 – BUNDLED

### 10.1 Background

It is the policy of the Department that contracting officers and acquisition planners—

- a. Structure contract requirements to facilitate competition by and among small business concerns; and
- b. Avoid unnecessary and unjustified bundling of acquisition requirements that serve as a barrier or precludes small business participation in acquisitions as prime contractors.

### 10.2 Definition of Bundled

*Contract bundling, bundled requirement, bundled contract, or bundling* means the consolidation of two or more acquisition requirements for goods or services previously provided or performed under separate smaller contracts by one or more small business concerns or that was suitable for award to one or more small business concerns into a solicitation of offers for a single contract, a MAC, single order, or multiple orders that is likely to be unsuitable for award to a small business concern or award to multiple small business concerns. Bundled acquisition also covers a single or multiple orders issued against a DOC-awarded contract, DOC bureau-awarded contract, a GSA schedule contract, and a task/delivery order contract awarded by another agency.

#### 10.2.1 Categories of Bundled

There are two categories of bundled based on cumulative estimated dollar value of the acquisition:

<b>Category</b>	<b>Dollar Threshold</b>
Bundled	Total estimated value under \$2.5 million
Substantially Bundled	Total estimated value \$2.5 million and above

## 10.2.2 Application

A bundled acquisition covers single award contracts, MACs, task or delivery orders issued against a bureau or Departmental awarded contract, and task or delivery orders issued against FSS contracts and contracts awarded by other federal agencies (i.e., GWACs).

If the contracting officer conducts the acquisition as a total set-aside or sole source award under FAR part 19, then the acquisition is not considered bundled or substantially bundled and a bundled or substantially bundled analysis is not required. However, the contracting officer may still need to prepare a justification for consolidation of requirements (see Section 11 – Consolidation).

## 10.3 Approving Authority

The Deputy Secretary is the approving authority for the Determination and Findings (D&F) for bundled and substantially bundled acquisitions (see FAR 7.107-3(f)(2)).

## 10.4 Acquisition Planning

The contracting officer and the acquisition planning team shall take the required steps to determine the feasibility of combining two or more requirements or two or more contracts; the extent of small business participation, especially as prime contractors; and necessity and justification of a bundled or substantially bundled acquisition approach.

### 10.4.1 Feasibility of Combining Requirements or Contracts

When contemplating combining multiple requirements or multiple contracts into a single solicitation for offers, the contracting officer and acquisition planning team shall conduct market research to determine if sources exist that are responsible and can satisfactorily perform the larger combined acquisition at reasonable cost or price.

A bundled acquisition may be unsuitable for small business, competitively awarded or sole source award, due to:

- (1) The diversity, size, or specialized nature of the elements of the performance specified;
- (2) The aggregate dollar value of the anticipated award;
- (3) The geographical dispersion of the contract performance sites; or
- (4) Any combination of (1), (2), and (3) above.

## 10.4.2 Extent of Small Business Participation

The contracting officer and acquisition planning team shall take appropriate steps to assess the extent of small business participation at the prime and subcontracting level, including:

- a. The contracting officer and acquisition planning team shall conduct market research that specifically targets socioeconomic small business and small business concerns, including incumbent socioeconomic small business contractors and small business contractors who are currently or previously performed any part or parts of the contemplated acquisition, to determine if the requirement can be set-aside or awarded as a sole source for a socioeconomic category prior to considering small business set-aside. Small business set-aside takes precedence over partial set-aside, full and open competition, and full and open competition with small business reserve.
- b. The contracting officer and the acquisition planning team shall consider small business teaming arrangements, including joint ventures and mentor-protégé joint ventures, as potential offerors.
- c. Any acquisition requirement that has been accepted by the SBA under the 8(a) Program must remain in the 8(a) Program unless the SBA agrees to its release in accordance with FAR 19.203 and 19.815, and 13 CFR 124.504(d). The contracting officer shall comply with the Departmental policy to request release of a requirement accepted by SBA into the 8(a) Program prescribed in subsection 4.2.2 of this chapter.

## 10.5 Justification of Bundled or Substantially Bundled Acquisition

### 10.5.1 Bundled: Analysis and Documentation

The contracting officer and acquisition planning team shall conduct the required analysis to determine if the bundling of two or more requirements or two or more contracts represent a legitimate need and is necessary.

If a bundled analysis was performed for the underlying contract awarded by a bureau or the Department, then that analysis covers all subsequent orders issued against that contract. The documentation for the bundled analysis and justification shall include at a minimum the following components:

**a. Inventory of Incumbent Small Business Contractors**

The contracting officer and acquisition planners shall conduct and document an inventory of all current contracts and task/delivery orders awarded to socioeconomic small business and small business concerns that will be impacted by the planned bundled acquisition, in part or whole. The inventory shall also include contracts and task/delivery orders for requirements that will be included in the bundled acquisition that ended within the past 12 months and performed by socioeconomic small business and small business concerns as prime contractors.

Template Used to Record Acquisition History

Contract Number (or Order Number)	Name of Contractor	Business Size	NAICS Code	Contract Description of Product or Service Slated for Bundling

**b. Feasibility of Bundled Acquisition**

The contracting officer and acquisition planning team shall document market research and analysis used to determine the feasibility of a bundled acquisition, including performance requirements and availability of an adequate number of potential contractors likely to submit offers.

**c. Notification to Current Small Business Contractors of Intent to Bundle**

The contracting officer shall directly notify all affected socioeconomic small business and small business concerns performing a contract affected by the bundled or substantially bundled acquisition as part of market research and prior to submission of the CD-570 to the small business specialist. The contracting officer shall include in the notification the name, phone number and address of the small business specialist and SBA PCR (or if a PCR is not assigned to the bureau, the contact information for the Area Office under the SBA Office of Government Contracting, serving the area in which the bureau procurement office is located). The contracting officer shall include a copy of the notification in the contract file.

The contracting officer shall submit the prepared written notification to the small business specialist prior to release.

**d. Market Research and Small Business Participation**

The contracting officer and acquisition planning team shall document strategies used to garner the interest and participation of socioeconomic small business and small business concerns in market research and development of the contemplated acquisition strategy. Such strategies may include:

- (i) Post draft solicitation or draft statement of work as a Request for Information (RFI) on FBO.gov and provide an opportunity for socioeconomic small business and small business concerns to review and comment.
- (ii) Industry day in which socioeconomic small business and small business concerns are provided with information about the requirement, contemplated acquisition strategy, acquisition history, and other relevant information, and to provide vendors with the opportunity to ask questions and make follow-up appointments to discuss the requirement and their capabilities further.
- (iii) One-on-one meetings with socioeconomic small business and small business concerns to provide them with the opportunity to speak candidly without revealing their potential proposal strategy or proprietary information to competitors.
- (iv) Vendor networking sessions to encourage teaming with small business concerns.

**e. Set-Aside Determination**

The contracting officer and acquisition planning team shall document analysis used to determine that a total set-aside or sole source award under FAR part 19 is not suitable for the contemplated bundled acquisition.

The contracting officer and acquisition planning team shall also document their assessment of alternative acquisition approaches to mitigate the effects of the contemplated bundled acquisition and maximize socioeconomic small business and small business participation as prime contractors. If the acquisition cannot be totally set-aside, the contracting officer shall consider the use of partial set-aside, full and open with small business reserves, or set-aside at the order level. If none of these authorities are used when they could have been, the Contracting Officer shall explain in writing why.

Alternative acquisition approaches include the following:

(i) Strategies for set-aside:

- a) Total set-aside: Break the bundled acquisition into a reasonable number of smaller discrete procurements suitable for prime contracting by socioeconomic small business and small business concerns and concurrently meet the objective of the bureau or Department to realize certain benefits from bundling requirements;
- b) Socioeconomic Sole Source: If the acquisition cannot be divided into smaller discrete components or categories and a single award contract is anticipated, consider making a socioeconomic sole source award when market research and recent past experience demonstrate that:
  - 1. At least one small business in a socioeconomic category can perform the entire requirement;
  - 2. There is not a reasonable expectation of receiving at least two offers from small business concerns in the same socioeconomic category;
  - 3. Award can be made at market price.

Reference FAR subparts 19.8; 19.13; 19.14; and 19.15 for further guidance on sole source awards.

- c) Partial set-aside: Break out one or more discrete components of the bundled acquisition suitable for prime contracting by socioeconomic small business and small business concerns, especially to preserve requirements which have been performed by small businesses over a substantial period of time and/or to preserve contracts in the Small Business Program that represent a substantial percentage of revenue for incumbent small business contractor(s).

(ii) Strategies for Small Business Participation Under Full and Open Competition

- a) Small Business Teaming – Encourage small business teaming arrangements, including joint ventures and mentor-protégé joint ventures, by assigning a proposal evaluation factor or subfactor for any offeror that teamed with socioeconomic small business and small business concerns at the prime contract level.

- b) Subcontracting Plan with Small Business Participation – Encourage small business participation by assigning small business participation goals based on the total contract value, including options; proposal evaluation factor with significant weight to assess the extent that socioeconomic small business and small business concerns are specifically identified and allocated portion of contract performance in proposals or identified and allocated work in any subcontracting plan; proposal evaluation factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans.
- c) Multiple Award Contract – Full and Open Competition with Small Business Reserve: Reserve one or more prime contracts for socioeconomic small business or small business concerns when market research demonstrates that small business concerns are unable to meet or perform at least 50% of the principal or core work of the requirement and the requirement cannot be broken into discrete categories suitable for partial set-aside.
- d) Multiple Award Contract – Order Level: Include in the solicitation the right to set-aside orders when the requirement for the “rule of 2” has been met and to issue orders directly to one small business concern for work that it can perform when there is only one contract award to any one type of small business concern identified in FAR 19.000(a)(3).

(iii) Other Strategies

The contracting officer and acquisition planners shall ensure the statement of work or terms of the solicitation/contract do not include barriers that inhibit or preclude participation by socioeconomic small business and small business concerns as prime contractors, such as:

- a) Contractor qualifications – refrain from dictating an arbitrary number of years for qualifying experience;
- b) Delivery schedule(s) – employ flexibility to accommodate small business capabilities;
- c) Divide nationwide coverage into smaller sectors, regions, or territories;
- d) Consider alternative bonding requirements for construction projects;
- e) Minimize the use or eliminate brand name or equal requirements; and

- f) Define volume of work based on individual task/delivery orders (actual or average) versus the cumulative estimated contract value or contract ceiling amount.

**f. Measurable Benefits**

- (i) The contracting officer and acquisition planning team shall use market research and other techniques to gather data to identify and quantify specific benefits that will be derived from bundling. Benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to measurable benefits.
- (ii) The contracting officer and acquisition planning team, in cooperation with the small business specialist and PCR (if a PCR is assigned to the bureau), shall compare the price that has been charged by small business contractors for the work that they performed and slated to be included in the bundled acquisition and the price that could have been charged by small businesses for the work not previously performed by small businesses to determine if the bundled acquisition dollar value represents the most effective cost savings.

**g. Quantitative Analysis**

If the information gathered for the bundling analysis suggests that it is in the Government's best interest to bundle the requirement, the Contracting Officer and acquisition planning team shall calculate measurable benefits anticipated to be derived from bundling.

The contracting officer and acquisition planners shall demonstrate any claimed benefits are:

- (i) Equivalent to 10% of the contract or order value (including options) where the contract or order value is \$94 million or less.
- (ii) Equivalent to 5% of the contract or order value (including options) or \$9.4 million, whichever is greater, where the contract or order value exceeds \$94 million.
- (iii) Equivalent to 10% of the contract or order value (including options) if based on savings in administrative or personnel costs.

- (iv) The BPO may submit a D&F based on an exception to the benchmarks identified above if upon completion of the required analysis the expected benefits do not meet the thresholds for substantial benefit but are deemed critical to the agency's mission success and the acquisition strategy provides for maximum practicable participation by small business concerns.

#### **h. Determination and Findings**

The contracting officer shall document the D&F and shall include the following information to show that the bundling is necessary, justified, and yields measurably substantial benefits compared to the benefits that could be derived from satisfying the requirement through separate smaller contracts or task/delivery orders.

- a. Inventory of incumbent small business contractors
- b. Feasibility of bundled acquisition
- c. Notification to current small business contractors of intent to bundle
- d. Market research and small business participation
- e. Set-aside determination
- f. Measurable benefits
- g. Quantitative analysis

### **10.5.2 Substantially Bundled: Analysis and Determination**

In addition to the required analysis and documentation identified in subsection 10.4.1 of this chapter for bundled acquisition, the contracting officer and acquisition planning team shall perform supplementary analysis to demonstrate when a substantially bundled acquisition is necessary and justified.

Substantially bundled acquisition covers MACs and task/delivery orders issued against FSS contracts and contracts awarded by other federal agencies (i.e., GWACs). DOC's policy extends the requirement to conduct analysis for substantially bundled acquisitions to also include single awards and MACs issued by DOC or bureau contracting officers. If a substantially bundled analysis was performed for the underlying DOC contract, the analysis covers all subsequent orders issued against that contract.

**a. Impact Analysis**

The contracting officer and acquisition planning team shall conduct analysis to assess specific impediments to participation by socioeconomic small business and small business concerns as prime contractors because of the substantially bundled acquisition strategy. Impediments may include:

- (i) Inability to participate as prime contractors due to the increased order of magnitude and dollar value of the contract;
- (ii) Displacement of current and recent small business contractors;
- (iii) Long-range effect of sustaining a competitive pool of qualified small businesses; and
- (iv) Loss of federal contract funding to develop solutions and technology, and therefore stay competitive within the industry.

**b. Determination and Findings**

The contracting officer shall document the D&F and shall include the following information to show that the bundling is necessary, justified, and yields measurably substantial benefits compared to the benefits that could be derived from satisfying the requirement through separate smaller contracts or task/delivery orders.

- a. Inventory of incumbent small business contractors
- b. Feasibility of bundled acquisition
- c. Notification to current small business contractors of intent to bundle
- d. Market research and small business participation
- e. Set-aside determination
- f. Measurable benefits
- g. Quantitative analysis
- h. Impact Analysis

### **10.5.3 Recompeted Bundled or Substantially Bundled Acquisition: Analysis and Documentation**

The contracting officer and acquisition planning team shall document the following analysis prior to any recompetete or follow-on acquisition:

- a. The amount of savings and benefits achieved under the prior bundling of contract requirements;
- b. Whether such savings and benefits will continue to be realized if the contract remains bundled;
- c. Whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns; and
- d. List of requirements that have been added or deleted for the recompeted or follow-on acquisition.

## **10.6 Review and Approval of Bundling Determination**

### **10.6.1 Contracting Officer**

For bundled and substantially bundled acquisitions, the contracting officer shall initiate the review and approval process by submitting Form CD-570, Small Business Set-Aside Review, along with the D&F signed by the contracting officer to the small business specialist, PCR (or the Area Office under the SBA Office of Government Contracting serving the area in which the bureau procurement office is located), and OSDDBU.

The contracting officer is responsible for obtaining all required approvals for the CD-570, Small Business Set-Aside Review, prior to submission of the D&F to the SPE through OAM. (Also refer to CAM 1307.1, Acquisition Planning, for further information).

The contracting officer is responsible for addressing and correcting any concerns identified by the small business specialist, PCR (or SBA Area Office if a PCR is not assigned to the bureau), and OSDDBU, and OAM.

The contracting officer shall not issue a solicitation for a bundled or substantially bundled acquisition until the CD-570 and D&F have been reviewed and approved by the small business specialist, PCR (or SBA Area Office), OSDDBU Director, SPE, and Deputy Secretary.

## **10.6.2 Small Business Specialist**

For bundled and substantially bundled acquisitions, the small business specialist shall submit the CD-570 package, along with the D&F signed by the contracting officer, to the PCR (or SBA Area Office), and OSDBU for review and approval. Upon approval of the OSDBU Director, the small business specialist (or staff designated by the BPO) shall submit the CD-570 package and D&F to the OAM Acquisition Policy and Oversight Division.

## **10.7 Notification to Public of Rationale for Bundled Requirement**

### **10.7.1 Pre-Solicitation Notice**

The contracting officer shall post a pre-solicitation notice on FBO.gov 15 days before the release of the solicitation (see FAR 5.203) announcing the acquisition, solicitation number, and D&F approved by the Deputy Secretary for any bundled or substantially bundled acquisition for which the agency intends to solicit offers and issue an award. The primary purpose of such notice is to inform socioeconomic small business and small business concerns about the pending solicitation for the bundled acquisition and enhance their participation at the prime and subcontracting levels.

### **10.7.2 Post-Award Notice**

The OAM is responsible for publishing the list of bundled requirements and approved D&F for public view on the Department's website within 30 days of data certification of data entered in the FPDS-NG to satisfy FAR 7.107-5(b). Therefore, within 3 days of contract award, the contracting officer shall submit to OAM the contract number, date of award, and a requirement identifier (title and/or description) to facilitate OAM matching information with the approved D&F (previously posted as a pre-solicitation notice on FBO). The required information shall be submitted via the OAM Mailbox at: OAM\_Mailbox@doc.gov.

## **10.8 Coordination on Acquisition Strategy**

### **10.8.1 Coordination with the Small Business Specialist**

- a. New Bundled or Substantially Bundled Acquisition
  - (i) The contracting officer shall notify the small business specialist in writing at the earliest possible opportunity if the acquisition strategy contemplates bundling or substantial bundling and provide an opportunity to participate in the development of the acquisition plan or strategy.

- (ii) The contracting officer shall work cooperatively with the small business specialist to:
  - a) Consider the benefits and disadvantages for combining two or more contracts or two or more requirements into a solicitation.
  - b) Consider alternative acquisition strategies that would allow a total set-aside, or if not possible, then consider partial set-aside, full and open with small business reserve, or other strategies to increase small business prime and subcontract participation.
  - c) Review the adequacy of actions taken to mitigate the effects of necessary and justified bundled or substantially bundled acquisition.
  - d) Review the adequacy of documentation and justification to ensure it contains required analysis.

b. Contract Modification

(i) Adding Requirements

Prior to modifying a bundled or substantially bundled contract to add new requirements, the contracting officer shall amend the previously approved bundled or substantially bundled analysis and D&F, and submit to the small business specialist, PCR (or SBA Area Office), OSDBU, SPE, and Deputy Secretary, as appropriate, for review and approval.

(ii) Deleting Requirements

If a bundled or substantially bundled contract is modified to delete requirements and a bundling analysis was conducted and approved for the underlying contract, the contracting officer shall notify the small business specialist. The contracting officer shall treat the deleted requirements as new acquisition requirements, if the requirements are still valid, and give socioeconomic small businesses and small business concerns first consideration.

c. Recompete Bundled or Substantially Bundled Acquisition

The contracting officer shall notify the small business specialist in writing no later than 60 days prior to the end date of the final contract option period that the bundled contract is to be recompeted.

The contracting officer and acquisition planning team shall prepare a new bundling analysis and D&F to demonstrate that previously identified benefits and savings were

achieved and are expected to continue if the contract remains bundled or the identified benefits and savings were not realized or would be greater if the acquisition requirements were divided into separate solicitations suitable for award to socioeconomic small business and small business concerns.

The contracting officer shall submit the bundled or substantially bundled analysis and D&F to the small business specialist, PCR (or SBA Area Office), OSDBU, SPE, and Deputy Secretary, as appropriate, for review and approval.

### **10.8.2 Coordination with the SBA Procurement Center Representative**

The contracting officer shall work closely with the small business specialist to ensure that the PCR (if a PCR is assigned to the bureau) receives the CD-570 package, including the approved D&F, and solicitation for review and approval at least 30 days prior to the release of the solicitation for offers.

For substantially bundled acquisitions where a PCR has not been assigned to the bureau, the contracting officer and small business specialist shall submit all required documentation and solicitation to the Area Office under the SBA Office of Government Contracting serving the area in which the bureau procurement office is located for review and approval at least 30 days prior to the release of the solicitation.

### **10.8.3 Coordination with the Office of Small and Disadvantaged Business Utilization**

#### **a. New Acquisition**

- (i) For acquisitions over the Simplified Acquisition Threshold, the small business specialist shall notify the OSDBU in writing no later than 5 work days after receiving written notification from the contracting officer that a planned acquisition may involve bundling two or more requirements or two or more contracts into a solicitation.
- (ii) The small business specialist shall notify the OSDBU when an acquisition strategy or plan includes bundled requirements that the bureau or contracting officer has not identified as bundled, or includes unnecessary or unjustified bundling of requirements.

b. **Recompeted Acquisition**

The small business specialist shall notify the OSDBU in writing no later than 5 work days after receiving written notification from the contracting officer that a bundled contract will be recompeted, when the planned acquisition has an estimated value over the Simplified Acquisition Threshold.

**END OF SECTION 10**

## **SECTION 11 – CONSOLIDATION**

### **11.1 Background**

It is DOC's policy that contracting officers and acquisition planners—

- a. Structure contract requirements to facilitate competition, especially competition by and among socioeconomic small business and small business concerns; and
- b. Avoid unnecessary and unjustified consolidation of acquisition requirements that serve as a barrier to competition and particularly precludes socioeconomic small business and small business participation in acquisitions as prime contractors.

### **11.2 Definition of Consolidation**

*Consolidation of contract requirements, consolidated contract, or consolidated* means a solicitation for a single contract, MAC, task order, or delivery order to satisfy: (1) two or more requirements for supplies or services that have been provided to or performed under two or more separate contracts, each of which was lower in cost than the total cost of the contemplated contract for which the offers are solicited, and the total cost of which exceeds \$2 million (including options); or (2) requirements for construction projects to be performed at two or more discrete sites.

Unlike the definition for bundled or substantially bundled acquisitions, the consolidation of requirements may or may not have been provided or performed by socioeconomic small business and small business concerns.

### **11.3 Application**

A consolidated acquisition covers single award contracts, MACs, task or delivery orders issued against a bureau or Departmental awarded contract, and task or delivery orders issued against FSS contracts and contracts awarded by other federal agencies (i.e., GWACs).

The contracting officer and acquisition planning team shall conduct the required analysis to determine if the consolidation of two or more requirements or two or more contracts represent a legitimate need and is necessary, even if the acquisition is planned as a set-aside or sole source award using FAR part 19.

If a consolidation analysis was performed for the underlying contract awarded by a bureau or the Department, then that analysis covers all subsequent orders issued against that contract.

If the acquisition involves both bundling and consolidation, the Contracting Officer shall comply with section 10 – Bundling.

## **11.4 Approving Authority**

The SPE is the approving authority for the D&F for consolidated acquisitions.

## **11.5 Acquisition Planning**

The contracting officer and the acquisition planning team shall take the required steps to determine the feasibility of consolidating two or more requirements into a solicitation for a single contract, MAC, or task/delivery order; the extent of small business participation, especially as prime contractors; and necessity and justification of a consolidation acquisition approach.

### **11.5.1 Feasibility of Combining Requirements**

When contemplating the consolidation of multiple requirements into a single solicitation for offers, the contracting officer and acquisition planning team shall conduct industry market research to determine if sources exist that are responsible and can satisfactorily perform the larger consolidated acquisition at reasonable cost or price.

### **11.5.2 Extent of Small Business Participation**

The Contracting Officer and acquisition planning team shall take appropriate steps to assess the extent of small business participation at the prime and subcontracting level.

- a. The contracting officer and acquisition planning team shall conduct market research that specifically targets socioeconomic small business and small business concerns, including incumbent socioeconomic small business contractors and small business contractors who are currently or previously performed any part or parts of the contemplated acquisition, to determine if the requirement can be set-aside or awarded as a sole source for a socioeconomic category prior to considering small business set-aside. Small business set-aside takes precedence over partial set-aside, full and open competition, and full and open competition with small business reserve.

- b. The contracting officer and the acquisition planning team shall consider small business teaming arrangements, including joint ventures and mentor-protégé joint ventures, as potential offerors.
- c. Any acquisition requirement that has been accepted by the SBA under the 8(a) Program must remain in the 8(a) Program unless the SBA agrees to its release in accordance with FAR 19.203 and 19.815, and 13 CFR 124.504(d). The contracting officer shall comply with the Departmental policy to request release of a requirement accepted by SBA into the 8(a) Program prescribed in subsection 4.2.2 of this chapter.

### 11.6 Justification of Consolidated Acquisition

The documentation for the consolidation analysis and justification shall include at a minimum the components described in this section.

#### a. Inventory of Incumbent Contractors

The contracting officer and acquisition planners shall conduct and document an inventory of all current prime contracts and task/delivery orders awarded, including identifying socioeconomic small business and small business contracts, that will be impacted by the planned consolidated acquisition, in part or whole. The inventory shall also include contracts and task/delivery orders for requirements that will be included in the consolidated acquisition that ended within the past 12 months, including contracts and orders awarded to socioeconomic small business and small business concerns.

Template Used to Record Acquisition History

Contract Number (or Order Number)	Name of Contractor	Business Size	NAICS Code	Contract Description of Product or Service Slated for Consolidation

#### b. Feasibility of Consolidated Acquisition

The contracting officer and acquisition planning team shall document market research and analysis used to determine the feasibility of a consolidated acquisition, including performance requirements and availability of an adequate number of potential contractors likely to submit offers.

**c. Market Research and Small Business Participation**

The contracting officer and acquisition planning team shall document market research used to garner the interest and participation of socioeconomic small business and small business concerns and to develop the contemplated acquisition strategy. Such strategies may include:

- (i) Post draft solicitation or draft statement of work on FBO.gov and provide an opportunity for socioeconomic small business and small business concerns to review and comment.
- (ii) Industry day in which socioeconomic small business and small business concerns are provided with information about the requirement, contemplated acquisition strategy, acquisition history, and other relevant information, and to provide vendors with the opportunity to ask questions and make follow-up appointments to discuss the requirement and their capabilities further.
- (iii) One-on-one meetings with socioeconomic small business and small business concerns to provide them with the opportunity to speak candidly without revealing their potential proposal strategy or proprietary information to competitors.
- (iv) Vendor networking sessions to encourage teaming with small business concerns.

**d. Set-Aside Determination**

The contracting officer and acquisition planning team shall document analysis used to determine that a total set-aside or sole source award under FAR part 19 is or is not suitable for the contemplated consolidated acquisition.

For MACs, if the acquisition cannot be totally set-aside, the contracting officer shall consider the use of partial set-aside, full and open competition with small business reserves, or set-aside at the order level authorized under section 1331 of Public Law 111-240 (15 U.S.C. 644(r)). If none of these authorities are used when they could have been, the contracting officer shall explain why (see 13 CFR 125.2(e)(iii)).

**e. Strategies Used to Increase Competition**

The contracting officer and acquisition planning team shall document their assessment of alternative acquisition strategies to mitigate the effect the contemplated consolidated acquisition strategy will have on competition and the ability to maintain a competitive pool of qualified vendors. Such strategies may include:

## Commerce Small Business Program

- (i) Create smaller procurements – Break the consolidated acquisition into a reasonable number of smaller discrete procurements while concurrently meeting the objective of the bureau or Department to realize certain benefits from consolidating requirements;
- (ii) Socioeconomic Sole Source – Consider socioeconomic sole source award if the acquisition cannot be divided into smaller discrete components or categories and a single award contract is anticipated based on market research and recent past experience that demonstrate:
  - a. At least one small business in a socioeconomic category can perform the entire requirement;
  - b. There is not a reasonable expectation of receiving at least two offers from small business concerns in the same socioeconomic category; and
  - c. Award can be made at market price.

Reference FAR subparts 19.8; 19.13; 19.14; 19.15 for further guidance on sole source awards under the 8(a), HUBZone, SDVOSB, and WOSB programs.

- (iii) Partial set-aside – Break out one or more discrete components of the consolidated acquisition suitable for prime contracting by socioeconomic small business and small business concerns, especially to preserve requirements which have been performed by small businesses over a substantial period of time or represent a substantial percentage of revenue for incumbent small business contractor(s);
- (iv) Small Business Teaming – Encourage small business teaming arrangements, including joint ventures and mentor-protégé joint ventures, by assigning a proposal evaluation factor or subfactor for any offeror that teamed with socioeconomic small business and small business concerns at the prime contract level.
- (v) Subcontracting Plan with Small Business Participation Evaluation Factors – Encourage small business participation by assigning small business participation goals based on the total contract value, including options; proposal evaluation factor with significant weight to assess the extent that socioeconomic small business and small business concerns are specifically identified and allocated portion of contract performance in proposals or identified and allocated work in any subcontracting plan; proposal evaluation factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans.

- (vi) Multiple Award Contract – Full and Open Competition with Small Business Reserve: The contracting officer and acquisition planning team shall consider the possibility of reserving one or more prime contracts for socioeconomic small business or small business concerns when market research demonstrates that small business concerns are unable to meet the entire requirement or a majority of the requirement, and the requirement cannot be broken into discrete categories suitable for partial set-aside.
- (vii) Multiple Award Contract – Order Level: The Contracting Officer and acquisition planners shall consider including in the solicitation the right to set-aside orders when the requirements for the “rule of 2” has been met.

**f. Impact Analysis**

The contracting officer and acquisition planning team shall conduct analysis to assess specific impediments to participation by socioeconomic small business and small business concerns as prime contractors because of the consolidation strategy. Impediments may include:

- (i) Inability to participate as prime contractors due to the increased order of magnitude and dollar value of the contract;
- (ii) Displacement of current and recent small business contractors;
- (iii) Long-range effect of sustaining a competitive pool of qualified small businesses; and
- (iv) Loss of federal contract funding to develop solutions and technology, and therefore stay competitive within the industry.

**g. Measurable Benefits**

- (i) The contracting officer and acquisition planning team shall use market research and other techniques to gather data to identify and quantify specific benefits that will be derived from consolidation. Benefits may include cost savings and/or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits that individually, in combination, or in the aggregate would lead to measurable benefits.

- (ii) The contracting officer and acquisition planning team, in cooperation with the small business specialist and PCR (if a PCR is assigned to the bureau), shall compare the price that has been charged by small business contractors for the work that they performed and slated to be included in the consolidated acquisition and the price that could have been charged by small businesses for the work not previously performed by small businesses to determine if the consolidated acquisition dollar value represents the most effective cost savings.

#### **h. Quantitative Analysis**

If the information gathered for the consolidation analysis suggests that it is in the Government's best interest to consolidate the requirement, the contracting officer and acquisition planning team shall calculate measurable benefits anticipated to be derived from consolidation.

Any claimed benefits shall be:

- (i) Equivalent to 10% of the contract or order value (including options) where the contract or order value is \$94 million or less.
- (ii) Equivalent to 5% of the contract or order value (including options) or \$9.4 million, whichever is greater, where the contract or order value exceeds \$94 million.
- (iii) Savings in administrative or personnel costs alone do not constitute a sufficient justification for consolidation unless the expected total amount of the cost savings, as determined by the SPE or CAO, is expected to be substantial in relation to the total cost of the procurement. To be substantial, such administrative or personnel cost savings must be at least 10% of the estimated contract or order value (including options).

#### **i. Determination and Findings**

The contracting officer shall document the Determination and Findings (D&F), based on information gathered to show that the consolidation is necessary, justified, and yields measurably substantial benefits compared to the benefits that could be derived from satisfying the requirement through separate smaller contracts or task/delivery orders.

- a. Inventory of incumbent contractors
- b. Feasibility of consolidated acquisition
- c. Market research and small business participation

- d. Set-aside determination
- e. Strategies used to increase competition
- f. Impact Analysis
- g. Measurable benefits
- h. Quantitative analysis

## **11.7 Recompeted Consolidated Acquisition: Analysis and Documentation**

The contracting officer and acquisition planning team shall document:

- a. The amount of savings and benefits achieved under the prior consolidated contact;
- b. Whether such savings and benefits will continue to be realized if the contract remains consolidated; and
- c. Whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.
- d. List of requirements that have been added or deleted for the recompeted acquisition.

## **11.8 Review and Approval of Consolidation Determination**

The contracting officer shall initiate the review and approval process by submitting Form CD-570, Small Business Set-Aside Review, along with the D&F signed by the contracting officer to the small business specialist, PCR (or the Area Office under the SBA Office of Government Contracting serving the area in which the bureau procurement office is located), and OSDBU.

The contracting officer is responsible for obtaining all required approvals for the CD-570, Small Business Set-Aside Review, prior to submission of the D&F to the SPE. (Also refer to CAM 1307.1, Acquisition Planning, for further information.)

The contracting officer is responsible for addressing and correcting any concerns identified by the small business specialist, PCR (or SBA Area Office), OSDBU, and OAM Acquisition Policy and Oversight Division.

The contracting officer shall not issue a solicitation for a consolidated acquisition until the CD-570 and D&F have been reviewed and approved by the small business specialist, PCR (or SBA Area Office), OSDBU Director, SPE, and Deputy Secretary if applicable.

## 11.9 Coordination of Acquisition Strategy

### 11.9.1 Coordination with the Small Business Specialist

#### a. New Acquisition

The contracting officer shall notify the small business specialist at the earliest possible opportunity if the acquisition strategy contemplates consolidation of requirements or contracts in writing and provide an opportunity to participate in the development of the acquisition plan or strategy.

The contracting officer shall work cooperatively with the small business specialist to:

- (i) Consider the benefits and disadvantages for combining two or more contracts or two or more requirements into a solicitation.
- (ii) Consider alternative acquisition strategies that would allow a total set-aside, or if not possible, then consider partial set-aside, full and open with small business reserve, or other strategies to increase small business prime and subcontract participation.
- (iii) Review the adequacy of actions taken to mitigate the effects of necessary and justified bundled or substantially bundled acquisition.
- (iv) Review the adequacy of documentation and justification to ensure it contains required analysis.

#### b. Contract Modification

##### (i) Adding Requirements

Prior to modifying a consolidated contract to add new requirements, the contracting officer shall amend the previously approved consolidated analysis and D&F, and submit to the small business specialist, PCR (or SBA Area Office), OSDBU, and OAM Acquisition Policy and Oversight Division for review and approval.

##### (ii) Deleting Requirements

If a consolidated contract is modified to delete requirements and a consolidation analysis was conducted and approved for the underlying contract, the contracting officer shall notify the small business specialist. The contracting officer shall treat the deleted requirements as new acquisition

requirements, if the requirements are still valid, and give socioeconomic small businesses and small business concerns first consideration.

c. Recompete Consolidated Acquisition

The contracting officer shall notify the small business specialist in writing no later than 60 days prior to the end date of the final contract option period that the consolidated contract is to be recompeted.

The contracting officer and acquisition planning team shall prepare a new consolidation analysis and D&F to demonstrate that previously identified benefits and savings were achieved and are expected to continue if the contract remains consolidated or the identified benefits and savings were not realized or would be greater if the acquisition requirements were divided into separate solicitations suitable for award to socioeconomic small business and small business concerns.

The contracting officer shall submit the consolidated analysis and D&F to the small business specialist, PCR (or SBA Area Office), OSDBU Director, SPE, and Deputy Secretary, as appropriate, for review and approval.

### **11.9.2 Coordination with the SBA Procurement Center Representative**

The contracting officer shall work closely with the small business specialist to ensure that the PCR (if a PCR is assigned to the bureau) receives the CD-570 package, including the approved D&F, and solicitation for review and approval at least 30 days prior to the release of the solicitation for offers.

For consolidated acquisitions where a PCR has not been assigned to the bureau, the contracting officer and small business specialist shall submit all required documentation and solicitation to the Area Office under the SBA Office of Government Contracting Office serving the area in which the bureau procurement office is located for review and approval at least 30 days prior to the release of the solicitation.

### **11.9.3 Coordination with the Office of Small and Disadvantaged Business Utilization**

a. New Acquisition

The small business specialist shall notify the OSDBU in writing no later than 5 work days after receiving written notification from the contracting officer that a planned acquisition may involve consolidating two or more requirements or two or more contracts into a solicitation.

b. Recompeted Acquisition

The small business specialist shall notify the OSDBU in writing no later than 5 work days after receiving written notification from the Contracting Officer that a consolidated contract will be recompeted.

**END OF SECTION 11**

## **SECTION 12 – IN-SOURCING SMALL BUSINESS CONTRACT REQUIREMENTS**

### **12.1 Background**

This section provides guidance when contemplating converting an activity currently being performed by a socioeconomic small business or small business contractor to an activity performed by a DOC employee.

### **12.2 Definition**

In-sourcing is the conversion of any currently contracted service/function to Federal performance.

### **12.3 Acquisition Planning**

The contracting officer and the acquisition planning team should continually review the efficiency and cost effectiveness of achieving programmatic objectives through contractor support. The review may include other considerations such as whether—

- a. The manner in which the contract is being performed would meet the criteria for a prohibited personal services contract;
- b. There is too great of a reliance on contract support in execution of agency mission (contributing to the sustained loss of institutional knowledge and capabilities);
- c. There is an existing deficiency or gap of essential knowledge or skills within the agency that needs to be remedied.

### **12.4 Converting Small Business Contracts to Government Activity**

Upon notification from a program office of the potential to convert an existing socioeconomic small business or small business contract to a government activity, the contracting officer shall notify the small business specialist and OSDBU in writing at the earliest possible opportunity.

The OSDBU Director and small business specialist will review the program office's plan to reduce or eliminate small business contractor support and advise the contracting officer and program office on how best to mitigate any adverse impact on the small business contractor.

## **Commerce Small Business Program**

The contracting officer shall prepare a CD-570, Small Business Set-Aside Review, with supporting documentation describing the conversion decision, proposed disposition of the small business contract, and submit the CD-570 package to the small business specialist for review and approval. The contracting officer is responsible for obtaining the approval of the small business specialist prior to taking any contract action.

The small business specialist will forward the CD-570 package to the OSDBU and PCR (if a PCR is assigned to the bureau) as an informational notification.

**END OF SECTION 12**

## **SECTION 13 – UNDUE RESTRICTION**

### **13.1 Background**

It is the policy of DOC to fully engage in open and meaningful exchange of information with socioeconomic small business and small business concerns in an effort to garner their interest and participation in our acquisitions, and enhance competition.

### **13.2 Complaint of Undue Restriction**

A small business concern may consider an acquisition or acquisition process to be unduly restrictive and hindering its ability to participate or compete for an award. The small business may choose to seek assistance by contacting the contracting officer, small business specialist, PCR (if a PCR is assigned to the bureau), competition advocate, or OSDBU.

If the complaint is received by—

- The contracting officer, a copy of the complaint shall be forwarded to the small business specialist, competition advocate, and OSDBU within 3 working days after receipt.
- The small business specialist, the complaint shall be forwarded to the contracting officer and a copy of the complaint shall be forwarded to the competition advocate and OSDBU within 3 working days after receipt.
- The OSDBU Director, the complaint shall be forwarded to the contracting officer and a copy of the complaint shall be forwarded to the competition advocate and small business specialist within 3 working days after receipt.

#### **13.2.1 Market Research**

At any time during the acquisition planning phase, a socioeconomic small business or small business concern may notify the contracting officer, small business specialist, PCR (if a PCR is assigned to the bureau), competition advocate, or OSDBU Director that it believes the market research approach or notice (i.e., Sources Sought) unduly restricts or otherwise hinders their participation in the market research activities or fails to give due consideration to the potential of setting-aside the acquisition. Upon receipt of such notice, the contracting officer shall work collaboratively with the small business specialist, acquisition planning team, competition advocate, and OSDBU Director, as appropriate, to develop and implement appropriate remedies. The contracting officer shall—

- a. Evaluate the complaint for merit and as appropriate make changes to the market research approach, market research notice (i.e., Sources Sought), description of required contractor qualifications, statement of work, etc. to remove any unnecessarily restrictive language and requirements;
- b. Consider recommendations from the small business specialist, competition advocate, OSDBU Director, and PCR (if a PCR is assigned to the bureau) to increase participation by socioeconomic small business and small business concerns;
- c. Forward brief statement to small business specialist, competition advocate, PCR (if a PCR is assigned to the bureau), and OSDBU Director summarizing actions taken to remedy the complaint;
- d. Respond to the small business that made the complaint, in writing and/or verbally, on actions taken to remedy the complaint; and
- e. Inform the small business concern of other resources and processes available such as—
  - 1) small business specialist
  - 2) OSDBU
  - 3) competition advocate
  - 4) PCR (if a PCR is assigned to the bureau)
  - 5) [SBA Area District Office](#)
  - 6) [Procurement Technical Assistance Centers](#)

### 13.2.2 Pre-Award

At any time prior to award, a socioeconomic small business or small business concern may notify the contracting officer, small business specialist, PCR (if a PCR is assigned to the bureau), competition advocate, or OSDBU Director that it believes that a solicitation, request for proposal, or request for quotation unduly restricts the concern's ability to compete for the award, whether set-aside, sole source, or full and open competition (reference 15 USC 644(k)(17)). The BPO shall use his/her discretion to establish procedures for controlling the receipt, evaluation, and timely disposition of such notifications. However, bureau procedures shall include the following elements:

The contracting officer shall—

- a. Work cooperatively with the small business specialist, PCR (if a PCR has been assigned to the bureau), competition advocate, OSDBU Director, and other resources

as appropriate, to determine if the complaint has merit and if the solicitation, request for proposal, or request for quotation should be altered to enhance competition;

- b. Consider recommendations by the small business specialist, PCR (if a PCR has been assigned to the bureau), competition advocate, OSDDBU Director, or other resources as appropriate, to address the complaint and remove any undue restrictive language and/or conditions;
- c. Prepare contract file documentation that describes the facts and circumstances of the complaint, results of investigation into the merits of the complaint, and conclusion, including a description of changes made to the solicitation, request for proposal, or request for quotation, if any, based on recommendations by the small business specialist, PCR (if a PCR has been assigned to the bureau), competition advocate, and OSDDBU Director to remedy the complaint;
- d. Submit copy of documentation to the small business specialist, PCR (if a PCR has been assigned to the bureau), OSDDBU, and competition advocate;
- e. Use discretion to determine the appropriate method to communicate resolution of complaint with the small business concern that filed the complaint (i.e., contact directly or issue an amendment to the solicitation); and
- f. Inform the small business concern of other resources and processes available to address unduly restrictive provisions in the solicitation, request for proposal, or request for quotation such as—
  - 1) small business specialist
  - 2) OSDDBU
  - 3) competition advocate
  - 4) PCR (if a PCR is assigned to the bureau)
  - 5) [SBA Area District Office](#)
  - 6) [Procurement Technical Assistance Centers](#)

**END OF SECTION 13**

## **SECTION 14 - UNSOLICITED PROPOSALS**

### **14.1 Background**

It is the policy of DOC to encourage the submission of new and innovative ideas from the small business industry to further the mission of the Department. Ideas submitted by small business concerns as unsolicited proposals often represent a substantial investment in time and resources, and are typically offered with the intent to enter into a contract with the Department.

### **14.2 Receipt of Unsolicited Proposal**

If an unsolicited proposal is received by the OSDBU Director, the Director shall forward the unsolicited proposal to the BPO and send a copy to the small business specialist for appropriate action.

### **14.3 Small Business Consideration**

The BPO shall use his/her discretion to establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals from socioeconomic small business and small business concerns consistent with FAR subpart 15.6. The BPO shall ensure that procedures require responsible personnel to keep the small business specialist informed of who is assigned to review the unsolicited proposal and the final disposition of the unsolicited proposal.

The small business specialist is the bureau's designated point of contact for receiving and handling unsolicited proposals from socioeconomic small business and small business concerns, including receiving such proposals forwarded from the OSDBU on behalf of the socioeconomic small business and small business concerns. The small business specialist shall keep the offeror informed of status and disposition.

The small business specialist shall keep annual record of all unsolicited proposals received and disposition status, and keep OSDBU informed.

## **14.4 Small Business Award**

In accordance with the procedures of the bureau procurement office, if the unsolicited proposal has been approved for processing without providing for full and open competition, the contracting officer shall prepare a J&A in accordance with FAR 6.303-1. The contracting officer shall submit a CD-570 along with the approved J&A to the small business specialist before commencing negotiations for a sole source contract.

**END OF SECTION 14**

## **SECTION 15 - REJECTING SBA RECOMMENDATIONS**

### **15.1 Informal Appeal**

Upon review of the CD-570, Small Business Set-Aside Review, the PCR may provide the contracting officer with a courtesy notification, sometimes referred to as an “Informal 70,” that the CD-570 package will be disapproved unless certain changes are made to the acquisition, such as: change strategy from full and open competition to set-aside or incorporate strategies to lessen the adverse impact of bundled action on socioeconomic small business and small business concerns.

Upon such notification, the contracting officer shall work with the small business specialist to resolve all issues to the PCR’s satisfaction, if possible. The small business specialist shall serve as the liaison between the PCR and the contracting officer.

### **15.2 Formal Appeal**

The contracting officer shall provide the PCR (if a PCR is assigned to the bureau) the opportunity to review the CD-570, Small Business Set-Aside Review, including supporting documentation and solicitation at least 30 days prior to issuing the solicitation.

If the PCR disapproves the CD-570 and provides recommendation for alternative acquisition strategies, the contracting officer may either accept or reject the PCR’s recommendations. (See FAR subpart 19.5). The contracting officer, with guidance from his/her supervisory chain and the small business specialist must respond to the within five (5) working days.

- a. Acceptance of PCR’s Recommendation - The contracting officer shall take appropriate action in accordance with the PCR’s recommendation and notify the small business specialist.

The small business specialist may require the contracting officer to submit a new or revised CD-570 for review and approval, or provide an addendum to the original CD-570.

- b. Rejection of PCR’s Recommendation - The contracting officer shall follow the procedures prescribed in FAR 19.505 and prepare a written justification for the reason he/she rejected the PCR’s recommendation. However, prior to notifying the PCR, the contracting officer shall:
  - (i) Notify his/her supervisor, small business specialist, OSDBU Director, and SPE on the date the PCR’s recommendation was received of intent to reject the PCR’s recommendation; and

- (ii) Work cooperatively with the small business specialist and OSDBU Director to reach a mutually amicable resolution.

Within two working days after receipt of the contracting officer's rejection, the PCR may exercise his/her authority to file an appeal to the SPE. Pending issuance of a decision by the SPE, the contracting officer shall suspend action on the acquisition. The SPE shall jointly develop a decision with the OSDBU Director and respond in writing to the PCR within 7 working days. (See CAM 1301.70 Appendix A, FAR Functional Matrix, the designee for the Head of Contracting Activity is the SPE; designee for the Secretary is the CAO).

- a. Acceptance of The PCR's Appeal - The SPE agrees with the PCR's recommendation and requires the contracting officer to take appropriate action. The SPE shall notify the contracting officer, PCR, BPO, OSDBU Director, and small business specialist of the resolution in writing.

The contracting officer shall take appropriate action to modify the acquisition and/or acquisition strategy and notify the small business specialist of actions taken.

- b. Rejections of The PCR's Appeal - The SPE agrees with the contracting officer's rejection and notifies the PCR, BPO, OSDBU Director, small business specialist, and contracting officer in writing.

Within two working days after receipt of the SPE's decision sustaining the contracting officer's decision, the PCR may request the contracting officer to continue to suspend action on the acquisition until the SBA Administrator appeals to the Secretary. The SBA is allowed 15 working days after the PCR's request to suspend action on the acquisition to appeal to the Secretary. SBA must notify the contracting officer within the 15-working day period if the Administrator filed an appeal to the Secretary. Upon notification, the contracting officer, in coordination with his/her supervisory chain of command and small business specialist, shall review and update the written justification for the decision to reject the PCR's recommendation, including the history of discussions between the contracting officer and PCR, and any attempts to resolve the matter. The BPO shall forward the justification to the SPE and OSDBU Director for review and approval. The SPE shall forward the justification to the CAO, along with a jointly prepared recommendation from the SPE and OSDBU to either agree or disagree with the SBA appeal. The contracting officer shall continue to suspend action on the acquisition until notification is received that the SBA appeal has been settled. The CAO shall reply on behalf of the Secretary to the SBA Administrator's appeal within 30 working days. The decision of the CAO shall be final.

Action Taken	Timeframe Allotted
<p>PCR disapproves the CD-570 and makes recommendations to modify the acquisition and/or acquisition strategy. The contracting officer shall either:</p> <p>a. Accept PCR's recommendation;  Notify small business specialist, verbally or in writing, of intent to accept PCR's recommendation.</p> <p>_____</p> <p>b. Negotiate mutually agreeable resolution with PCR in consultation with the small business specialist and OSDBU Director; or</p> <p>_____</p> <p>c. Reject PCR's recommendation.</p> <ul style="list-style-type: none"> <li>- Alert supervisory chain, small business specialist, OSDBU Director, and SPE of intent to reject PCR's recommendation.</li> <li>- Prepare a written justification for the decision to reject the PCR's recommendation (for use later if needed).</li> <li>- Submit written notice to PCR rejecting recommendation and stating reasons.</li> </ul>	<p>Within 2 working days of receipt of PCR's recommendation.</p> <p>Within 4 working days of receipt of PCR's recommendation</p> <p>Within 5 working days of receipt of the PCR's recommendation.</p>
<p>PCR appeals the contracting officer's decision to the SPE.</p>	<p>Within 2 working days upon receipt of the contracting officer's rejection notice.</p>
<p>Upon receipt by the SPE of the PCR's appeal, the contracting officer shall suspend action on the acquisition pending issuance of the SPE's decision to the PCR.</p>	<p>Contracting officer suspends action on acquisition on day of receipt of the PCR's appeal.</p>
<p>SPE, as the HCA designee, shall render a written decision to the PCR to either:</p> <p>a. Agree with the PCR's recommendation or propose alternative recommendations agreeable to the PCR; or</p> <p>b. Agree with the contracting officer's decision.</p>	<p>Within 7 working days of receipt of the PCR's appeal.</p>

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<b>Action Taken</b>	<b>Timeframe Allotted</b>
<p>PCR submits a request to the contracting officer to continue to suspend action on acquisition pending appeal to the Secretary.</p>	<p>Within 2 working days of receipt of the SPE's decision.</p>
<p>The SBA Administrator may either:</p> <p>a. File a final appeal to the Secretary and notify the contracting officer that the appeal has been filed; or</p> <p>b. Take no further action. If the Administrator does not file an appeal within the 15-day period, DOC shall consider the matter settled and no further action by SBA will be taken. The contracting officer shall consider SBA's request to suspend action on the acquisition withdrawn.</p>	<p>Within 15 working days of the PCR's second request to suspend action on the acquisition.</p>
<p>Upon SBA notification of appeal, the contracting officer shall notify the BPO, small business specialist, OSDBU Director, and SPE of SBA's appeal to the Secretary.</p>	<p>On day of receipt of SBA's notification.</p>
<p>The BPO shall forward the contracting officer's written justification for rejecting the PCR's recommendation, history of discussions between the contracting officer and PCR, and summary of attempts to resolve the matter to the SPE and OSDBU Director for review and approval.</p>	<p>Within 10 working days of receipt of SBA's notice that an appeal has been submitted to the Secretary.</p>
<p>The SPE shall forward the contracting officer's justification documentation to the Chief Acquisition Officer (CAO) who is also the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), along with a jointly prepared recommendation from the SPE and OSDBU Director to either agree or disagree with the SBA appeal.</p>	<p>Within 5 working days of receipt of documentation submitted by the Bureau Procurement Official</p>
<p>The CAO shall make the final decision for DOC.</p>	<p>Within 30 working days of receipt of the Administrator's appeal.</p>

**END OF SECTION 15**

## **SECTION 16 – SMALL BUSINESS SUBCONTRACTING PROGRAM**

### **16.1 Background**

The Small Business Act, as amended, establishes statutory authority for the Small Business Subcontracting Program. The participation of large business contractors in the Program is mandatory. DOC supports the Federal policy to require large business contractors to provide small business concerns, including socioeconomic small business concerns, with the opportunity to grow and gain experience and revenue through subcontracting.

A subcontracting plan describes in detail the offeror's methodology to (a) utilize socioeconomic small business and small business concerns to perform certain portions of the contract requirements and (b) establish goals based on the percent of total contract value, including options. The offeror's accepted subcontracting plan is a material part of the contract, and small business subcontracting is a deliverable under the contract.

### **16.2 Acquisition Thresholds**

The Small Business Subcontracting Plan thresholds are defined in FAR 19.702.

### **16.3 Applicability**

If the contracting officer determines that subcontracting possibilities exist, he/she shall include the requirements to subcontract with small business concerns (FAR 52.219-8, Utilization of Small Business Concerns) and small business subcontracting plan (FAR 52.219-9, Small Business Subcontracting Plan) in the solicitation for offers, invitation for bids, or modification when the total acquisition value exceeds the subcontracting plan threshold specified in FAR subpart 19.7.

The requirement for a subcontracting plan does not apply to—

- a. Acquisitions set-aside and awarded as sole source under FAR part 19;
- b. Small business concern awarded contract under full and open competition (so long as the concern meets the size standard for the NAICS code assigned to the solicitation);
- c. Contracts performed entirely outside of the U.S. and its outlying areas; and
- d. Personal services contracts.

## 16.4 Acquisition Planning and Market Research

The contracting officer and acquisition planning team shall rely on the results of market research and other methods used to gather feedback from both large and small business concerns, to determine if subcontracting opportunities exist and to what extent. The Contracting Officer and acquisition planners shall take into consideration such factors as:

- a. If business concerns in the industry or subindustry under the NAICS code assigned to the solicitation customarily subcontract part(s) of the work or perform all aspects of the work with in-house personnel and resources;
- b. If the product or service to be acquired is proprietary to the manufacturer, and whether the manufacturer utilizes resellers, suppliers, and service providers;
- c. If business concerns typically utilize subcontractors, what types or categories of work are available. Consider what part(s) of the principal work described in the solicitation can likely be subcontracted to socioeconomic small business and small business concerns.

### 16.4.1 Establish Target Subcontracting Goals

The contracting officer and acquisition planners shall develop targets for socioeconomic small business and small business subcontracting goals, based on market research, acquisition history, and other factors, that represent the minimum opportunity, particularly in performing portions of the principal or core work of the solicitation.

The Contracting Officer shall use his/her discretion to determine best use of the target goals to:

- a. Use the target subcontracting goals to establish a negotiation position or
- b. List the target subcontracting goals in the solicitation with instructions to offerors to use target goals as the minimum or baseline upon which to propose higher realistic goals.

The contracting officer and acquisition planners shall not use the Departmental-assigned bureau subcontracting goals as the target goals.

## 16.4.2 Determination of No Subcontracting Possibilities

### 16.4.2.1 Pre-Solicitation

- a. If the contracting officer determines that there are no subcontracting possibilities for the planned acquisition, based on market research and other methods used to gather information, the contracting officer shall submit a D&F for review and approval to: one level above the contracting officer, small business specialist, and OSDBU for review and approval. The D&F shall detail the rationale and include supporting documentation.

The D&F, signed by one level above the contracting officer, shall be submitted with the CD-570, Small Business Set-Aside Review to the small business specialist, PCR, and OSDBU for review and approval. The contracting officer shall not release the solicitation prior to attaining the required approvals.

- b. The small business specialist or OSDBU may recommend alternative acquisition strategies, based on information presented in the CD-570 and D&F, to create or increase opportunities for socioeconomic small business and small business concerns to participate as subcontractors as a condition for approving the CD-570.
- c. The PCR may also provide the contracting officer with recommendations. The small business specialist shall work cooperatively with the contracting officer in reviewing and implementing the PCR's recommendation. Also see section 15 – Rejecting SBA Recommendations.

### 16.4.2.2 Pre-Award

- a. If the contracting officer determines after receipt of offers that the apparently successful offeror's proposal has no subcontracting opportunities, the contracting officer shall submit a D&F for review and approval to: one level above the contracting officer, small business specialist, and OSDBU for review and approval. The D&F shall detail the rationale and include supporting documentation. The contracting officer shall not execute the contract prior to attaining the required approvals.
- b. The contracting officer shall provide an informational copy of the approved D&F to the PCR (if a PCR is assigned to the bureau) and the small business specialist.

## 16.5 Strategies to Encourage Utilization of Small Business Subcontractors

The contracting officer shall use his/her discretion to make best use of the procurement mechanisms provided by the Small Business Subcontracting Program to encourage offerors to utilize small businesses to the maximum extent practical in performing the principal work of the contract such as:

- a. Require other than small offerors to submit a subcontracting plan with initial offer and explain how socioeconomic small business and small business concerns will be utilized to perform portions of the principal or core work of the solicitation and within the context of the overall technical and cost proposal.
- b. Require other than small offerors to describe methodology to recruit and utilize socioeconomic small business and small business concerns considered experts or specialist in certain industry subsectors, as subcontractors to perform portions of the principal or core work of the solicitation.
- c. Require other than small offerors to describe specific actions that are measurable and that will be used during contract performance to demonstrate and achieve “good faith effort” to comply with the subcontracting plan.
- d. Require other than small offerors to calculate small business subcontracting goals as a percentage of the total contract value, including all options.

### 16.5.1 Small Business Participation Strategies

The use of *Small Business Participation* mechanisms is mandatory for bundled, substantially bundled, and consolidated acquisitions. However, the contracting officer has the discretion to use *Small Business Participation* mechanisms in acquisitions not involving bundling or consolidation to increase the utilization of socioeconomic small business and small business concerns as subcontractors.

- a. Past Performance - The contracting officer shall include a factor to evaluate the extent the offeror complied with subcontracting plans and met the subcontracting goals for socioeconomic small business and small business categories.
- b. Proposed Participation – The contracting officer shall include a factor to evaluate the extent of utilization of socioeconomic small business and small business concerns proposed by the offeror. The contracting officer shall evaluate the extent to which the offeror identified the names of socioeconomic small business and small business concerns in the subcontracting plan, described the principal or core work those small businesses will perform, the dollar value of the work, extent of total participation based

on the total value of the acquisition, including all options, represented by dollars and percentages for the base year and each individual option period, and evidence of commitment to the identified firms (i.e., offeror provided evidence of enforceable agreements or contracts with small businesses or provided evidence that small business concern(s) were notified in writing of their inclusion in the offeror's proposal or written agreements signed by the offeror and proposed subcontractor(s)).

The contracting officer shall structure evaluation factors to allow socioeconomic small business and small business concerns to submit offers as prime contractors and receive full credit under the Small Business Participation evaluation factors. (Under the Small Business Participation evaluation factors, large business concerns achieve the goals through subcontracting and small business concerns achieve the goals through their own performance/participation as the prime contractor).

## **16.6 Evaluation of Offeror's Subcontracting Plan**

### **16.6.1 Contracting Officer and Technical Evaluation Panel**

The contracting officer and Technical Evaluation Panel (TEP) shall evaluate the offerors' subcontracting plans concurrently with the offerors' technical and cost proposals to determine:

- a. Utilization of small business subcontractors. Evaluate offeror's proposed subcontracting plan by considering factors such as:
  - (i) Methodology for how socioeconomic small business and small business subcontractors will be utilized, especially to perform principal or core work, and correlates with the technical and cost proposals;
  - (ii) Commitment to utilize socioeconomic small business and small business subcontractors by identifying companies by name and address, the principal or core work that the named companies will perform, the percentage of the total contract value the subcontracted work represents; and
  - (iii) Identification of the types and volume of principal or core work that will be reserved for socioeconomic small business and small business subcontractors, and the percentage of the total contract value the subcontracted work represents.

- b. Realism of subcontracting plan. Evaluate offeror's proposed subcontracting plan by considering factors such as:
  - (i) Relative past success of offeror's methods to identify and award subcontracts to socioeconomic small business and small business concerns, meet subcontracting goals, and comply with requirements of the subcontracting plan.
  - (ii) Description of principal work and performance schedule to be assigned to socioeconomic small business and small business concerns and that correlates with the technical and cost proposals; and
  - (i) Description to achieve goals significantly higher than the target goals specified in the solicitation. Provide sufficient detail to demonstrate reasonable likelihood of achievement.
  
- c. Good faith effort. Evaluate offeror's proposed subcontracting plan by considering factors such as:
  - (i) Description of action items and timelines to subcontract with socioeconomic small business and small business concerns that correlate with the overall methodology for performing or completing the contract.
  - (ii) Comparison of proposed methodology to utilize socioeconomic small business and small business concerns as subcontractors to proven methods used for the same or similar acquisitions.
  
- d. Past performance. Evaluate offeror's proposed subcontracting plan by considering factors such as:
  - (i) Past performance in awarding subcontracts for products and services that are the same or similar to the planned acquisition demonstrates offeror's intention to utilize socioeconomic small business and small business concerns to the maximum extent practicable on the planned contract and comply fully with proposed subcontracting plan;
  - (ii) Past performance record reported in Contractor Performance Assessment Reporting System (CPARS), Electronic Subcontracting Reporting System (eSRS), or other past performance evaluation methodologies, demonstrate compliance with previous subcontracting plans and contractor responsibility.

- e. Includes all required elements. Evaluate whether offeror's proposed subcontracting plan:
  - (i) Includes all required elements in accordance with FAR 19.704. If the plan does not include all required elements, the offeror is ineligible for contract award.
  - (ii) Provides any evidence of intention not to comply with FAR 52.219-8, Utilization of Small Business Concerns. If there is evidence of intent not to comply, the contracting officer may find the offeror nonresponsible.

## 16.6.2 Small Business Specialist and OSDBU

### a. Pre-Solicitation

Prior to the issuance of the solicitation, the contracting officer shall provide the small business specialist with five (5) working days, or longer if requested by the small business specialist, to review the solicitation. The review of the solicitation is at the discretion of the small business specialist and OSDBU Director.

The small business specialist and OSDBU Director may provide the contracting officer with recommended alternative acquisition strategies to ensure and/or increase small business participation as subcontractors. The contracting officer shall consider the recommendations of the small business specialist and OSDBU Director, and if the recommendations are not adopted, then the contracting officer shall document the contract file explaining why. The contracting officer shall provide the small business specialist and OSDBU Director with a copy of the file documentation. Upon receipt of the contracting officer's notice of rejection of the recommendations of the small business specialist, the small business specialist may escalate the matter to the OSDBU Director.

### b. Pre-Award

The contracting officer shall provide the small business specialist and OSDBU Director a reasonable period of time prior to the conclusion of discussions with the apparent awardee to review the subcontracting plan, technical and cost proposals, and other documentation, or to review the subcontracting plans of all offerors as a member of the TEP. The contracting officer shall provide the small business specialist five (5) working days, or longer if requested by the small business specialist, to review the subcontracting plan. The small business specialist may provide the contracting officer with recommendations, and the contracting officer and small business specialist shall work cooperatively to resolve the issues. If the contracting officer rejects the

recommendations of the small business specialist, the contracting officer shall provide written notice explaining why within 5 working days of receipt of the small business specialist's recommendation. Upon such notice, the small business specialist shall escalate the matter to the OSDBU Director.

### 16.6.3 Procurement Center Representative

a. Pre-Solicitation

The small business specialist is the liaison responsible for ensuring the PCR, or the SBA Government Contracting Area Office if a PCR is not assigned to the bureau, is provided the opportunity to review the solicitation.

The contracting officer shall provide the PCR (if a PCR is assigned to the bureau), the opportunity to review the solicitation and other necessary information relating to the acquisition at least 30 days prior to the issuance of a solicitation (reference 13 CFR 125.2 and FAR 19.705-3). Also reference section 15 of this chapter, Rejecting SBA's Recommendations.

If a PCR is not assigned to the bureau, the contracting officer may be required to provide information to the SBA Government Contracting Area Office that serves the area in which the contracting officer is located.

b. Pre-Award

The small business specialist is the liaison responsible for ensuring the PCR (or SBA Government Contracting Area Office if a PCR is not assigned to the bureau) is provided the opportunity to review the proposed contract. See section 15 of this manual for instructions when the contracting officer rejects the PCR's recommendation.

The contracting officer shall notify the PCR (or the SBA Government Contracting Area Office if a PCR is not assigned to the bureau) of the opportunity to review the contract, including the subcontracting plan and other supporting documentation. The contracting officer shall issue the notice in sufficient time to allow the PCR (or the SBA Government Contracting Area Office if a PCR is not assigned to the bureau) a reasonable period of time to review the documentation. If the PCR does not respond to the contracting officer within 5 working days, the contracting officer shall proceed with award accordingly.

c. Post-Award

1. The contracting officer shall:

- (i) Provide SBA with a copy of the contract, including the subcontracting plan which is a material part of the contract (see FAR subpart 19.7).
- (ii) Ensure that the Contract Action Report (CAR) is properly coded in FPDS-NG to indicate that a subcontracting plan is required. Propagating the FPDS-NG subcontracting plan data field will automatically provide information to the Electronic Subcontracting Reporting System (eSRS) which will allow the contractor to file required reports.
- (iii) Ensure contractor submits required reports into the eSRS within 30 days after the report ending date.

<b>Contractor Deliverable Semi-Annual Reporting</b>		
<b>Report Type</b>	<b>Period Ending</b>	<b>Report Due</b>
Individual	March 30 <sup>th</sup>	April 30 <sup>th</sup>
	September 30 <sup>th</sup>	October 30 <sup>th</sup>
Individual - Corrected		Within 30 days of receiving notice of contracting officer's rejection
Individual - Final		Within 30 days of contract completion
Summary	September 30 <sup>th</sup>	October 30 <sup>th</sup>
Summary – Corrected		Within 30 days of receiving notice of contracting officer's rejection
Commercial	September 30 <sup>th</sup>	October 30 <sup>th</sup>

- (iv) Acknowledge receipt or reject reports filed by contractors in eSRS within 30 days of submission. By acknowledging receipt of a report in eSRS, the contracting officer indicates that the contractor has met its responsibility to submit the required report. However, the contracting officer must still accept or approve the report as a contract deliverable. If upon review, the contracting officer identifies errors, the contractor shall follow the instructions on eSRS website and FAR 19.7 to reject the report. If the contracting officer rejects the report, the contracting officer shall ensure that

the contractor makes the necessary corrections and resubmits the report within 30 days of receiving the notice of rejection.

- (v) The contracting officer is responsible for ensuring that the prime contractor complies with all required elements of the subcontracting plan identified in FAR 19.704, including ensuring that small business subcontractors are paid timely.
- (vi) Review for contract compliance the Individual Subcontracting Reports (ISRs), and where applicable, Summary Subcontracting Reports (SSRs) for commercial subcontracting plans, filed in eSRS by the prime contractor within 60 days of the report ending date.

**Contracting Officer  
Acknowledge Semi-Annual Reports**

<b>Contractor Report Due</b>	<b>Contracting Officer Acknowledge By</b>
April 30 <sup>th</sup>	May 30 <sup>th</sup>
October 30 <sup>th</sup>	November 30 <sup>th</sup>

- (vii) Take corrective action, as required, when contractor is not in compliance with subcontracting plan and/or not meeting goals.
  - (viii) Notify the small business specialist of any contractor not meeting all goals and terms of the subcontracting plan, and describe corrective actions that will be taken to bring the contractor into compliance.
2. The small business specialist shall monitor the bureau's subcontracting goal performance.
- (i) Monitoring activities may include ensuring that:
    - (a) Contractors are submitting required reports into eSRS timely;
    - (b) contracting officer are acknowledging eSRS reports timely;
    - (c) Contractors are meeting goals as stated in subcontracting plans.

- (ii) The small business specialist shall discuss with the contracting officer efforts taken to hold the contractor in compliance with the subcontracting plan, as necessary.
  
- 3. The OAM shall be responsible for accepting SSRs in eSRS submitted by DOC contractors that have individual subcontracting plans. The SSR includes all subcontract awards regardless of the dollar amount and direct and indirect costs. The SSR data is used by the SBA to calculate agencies' annual subcontracting goal achievement report.
  
- 4. The contracting officer who approved the commercial plan is responsible for acknowledging or rejecting the SSR.

**END OF SECTION 16**

## **SECTION 17 – SMALL BUSINESS PAYMENT ASSISTANCE**

### **17.1 Background**

The obligation to make prompt payments for products and services received is vital to helping small business concerns remain in the industry and continue to be competitive. Prompt payment on the contract serves the best interest of both the small business contractor and DOC.

### **17.2 Prompt Payment**

The contracting officer's representative (COR) and contracting officer assigned to the contract shall process proper invoices in a timely manner to ensure small business contractors are paid as early as possible. (Reference FAR subpart 32.9, *Prompt Payment* and OMB M-11-32, *Accelerating Payments to Small Businesses for Goods and Services*).

### **17.3 Small Business Assistance**

The bureau procurement office shall devise appropriate procedures to inform small business offerors of assistance available to resolve delinquent payments or disagreements in payments should the need arise during contract performance (see FAR 32.909 *Contractor Inquiries*).

Contracting officers shall advise small business offerors and contractors that additional assistance is available from the small business specialist or the OSDBU related to payment issues, late payment interest penalties, and information on the Prompt Payment Act.

**END OF SECTION 17**

## **SECTION 18 – ADMINISTRATIVE RESPONSIBILITIES**

### **18.1 Background**

The operation of DOC's Small Business Program is a cooperative effort by the OSDBU Director, SPE, and BPOs. The success of the Program relies on the necessity to take certain actions, monitoring, and reporting.

### **18.2 Bureau Planning and Reporting**

The Department is required to annually provide to the Administrator of SBA:

- a. Small Business Utilization Plan – description of strategies and activities to increase award dollars and number of contract awards to socioeconomic small business and small business concerns;
- b. Small Business Progress Report – description of effectiveness of strategies and activities used to achieve prime and subcontracting goals;
- c. Contract Bundling Report – description of actions taken to mitigate the adverse effect of contract bundling and actions taken to guard against unnecessary contract bundling; and
- d. Corrective Action Report – description of actions that will be taken to improve performance for any missed prime or subcontracting goals.

To this end, BPOs are requested to submit an annual report to the SPE and OSDBU Director as follows:

- a. Small Business Utilization Plan – Due no later than the 2<sup>nd</sup> week of November.

Provide report that describes comprehensive strategy to—

- 1) To increase award dollars to socioeconomic small business and small business concerns, and achieve prime and subcontracting goals in all categories.
- 2) To increase the number of socioeconomic small business and small business contractors compared with the previous fiscal year.
- 3) To meet any missed goals from previous fiscal year.
- 4) Increase market research and communication activities targeting socioeconomic small business and small business concerns.
- 5) Improve small business subcontracting monitoring and compliance.

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- 6) Utilize bureau leadership to achieve socioeconomic small business and small business prime and subcontracting goals.
- 7) Ensure personnel who are SES and GS-15 and in a position to influence an acquisition have small business goaling as a critical element in their performance plans or at least one critical element that measures engagement and commitment to the achievement of small business goals;
- 8) Identify bureau-wide initiatives or projects that will result in a significant increase in award dollars to small business or to one of the small business socioeconomic categories.
- 9) Organize at least one on-site small business outreach event.
- 10) Provide funding for small business specialist to travel and participate in small business outreach and training events in cooperation with the OSDDBU;
- 11) Ensure FPDS-NG data accuracy.
- 12) Ensure eSRS data accuracy.
- 13) Workforce training on small business contracting mechanisms and DOC small business policy.

### b. Small Business Progress Report – Due No later than the 2<sup>nd</sup> week of November

Year-end report to describe effectiveness of strategies and activities used to achieve prime and subcontracting goals. Also include the following information:

- 1) Actions taken to manage and process unsolicited proposals from small business concerns. Include information such as:
  - (i) Number of unsolicited proposals received during the fiscal year
  - (ii) Final outcome (i.e., made an award or rejected the proposal)
- 2) Actions taken to resolve any complaints of unduly restrictive solicitations, request for proposal, or request for quotation. Include information such as:
  - (i) Number of complaints received during the fiscal year
  - (ii) Final outcome
- 3) Actions taken to manage in-sourcing, conversion from small business contract to government employee(s).
  - (i) Number of contracts affected during the fiscal year
  - (ii) Number of contractor employees hired by program office (if known)

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c. Contract Bundling Report – Due No later than the 2<sup>nd</sup> week of November

Actions taken during the year to avoid unnecessary bundling and to ensure actions were not miscoded as bundled in FPDS-NG. If the bureau procurement office awarded any bundled acquisitions, describe actions taken to mitigate the effects on socioeconomic small business and small business concerns, utilization of participation components in the subcontracting plan, and effectiveness of efforts.

d. Corrective Action Report – Due No later than the 2<sup>nd</sup> week of November

Planned actions to improve performance for any missed prime and subcontracting goals.

**END OF SECTION 18**

**Attachment 1**



**U.S. Department of Commerce**  
**Template for Individual Subcontracting Plan**  
*Effective 10/17/2018*

The U.S. Department of Commerce, Office of Small and Disadvantaged Business Utilization (OSDBU) recommends offerors use this template to submit proposed subcontracting plans. This template is designed to be consistent with the Federal Acquisition Regulation (FAR), 19.704, Subcontracting plan requirements and clause 52.219-9, Small Business Subcontracting Plan. This template is not intended to replace any existing Corporate/Commercial Plan that is more extensive.

*To be completed by the contracting officer*

The contracting officer may use discretion to set target subcontracting goals for any of the socio-economic and small business categories that represent the minimum goal(s) government will accept. The target goals shall be used by offeror to develop its subcontracting goals.

*If left blank continue to Section B.*

CATEGORY	TARGET GOAL
SMALL BUSINESS (SB)	%
SMALL DISADVANTAGED BUSINESS (SDB)	%
WOMEN-OWNED SMALL BUSINESS (WOSB)	%
HISTORICALLY UNDERUTILIZED BUSINESS ZONE (HUBZ)	%
VETERAN-OWNED SMALL BUSINESS (VOSB)	%
SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDVOSB)	%

**The following sections to be completed by the offeror**

DATE OF SUBCONTRACTING PLAN SUBMISSION	
SOLICITATION/CONTRACT NUMBER	
COMPANY NAME AND ADDRESS	
DUNS NUMBER	

**COST PROPOSAL**

TOTAL DOLLAR VALUE, INCLUDING ALL OPTIONS:	\$
BREAKDOWN BY BASE AND OPTION PERIODS:	
BASE PERIOD:	\$
OPTION 1	\$
OPTION 2	\$
OPTION 3	\$
OPTION 4	\$
OPTIONAL SERVICES AND/OR PRODUCTS	\$

**Elements of Subcontracting Plan**

**1. Total dollars planned to be subcontracted**

The offeror shall propose separate goals based on total contract value.

	<b>BASED ON TOTAL TOTAL CONTRACT VALUE, INCLUDING OPTIONS</b>	
	<b>DOLLAR</b>	<b>PERCENTAGE</b>
TOTAL SUBCONTRACT DOLLARS:	\$	
SMALL BUSINESS <i>(INCLUDES ALL SOCIOECONOMIC DOLLARS)</i>	\$	%
OTHER THAN SMALL BUSINESS (OTS)	\$	%

**2. Separate percentage goals for socioeconomic categories**

CATEGORY	BASED ON TOTAL CONTRACT VALUE, INCLUDING OPTIONS	
	DOLLAR	PERCENTAGE
SDB	\$	%
HUBZone	\$	%
WOSB	\$	%
VOSB	\$	%
SDVOSB	\$	%

**3. Description of principal types of supplies and services to be subcontracted**

Identify the types of business concerns that will provide principal or core work and/or products as subcontractors under this contract, identified by CLIN or other identification method used by the contracting officer.

PRODUCT OR SERVICE	OTS (✓)		SB (✓)		SDB (✓)		WOSB (✓)		HUBZ (✓)		VOSB (✓)		SDVOSB (✓)	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
<i>Insert CLIN # and description</i>														
<b>TOTALS</b>	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%

**3a. Small Business Participation**

The contracting officer may examine the extent of small business participation by evaluating the offeror’s commitment to utilizing socioeconomic and small business concerns in performance of the contract. If the offeror is claiming small business participation credit, then the offeror must identify the name of the concern and principal work (i.e., CLIN).

NAME OF SMALL BUSINESS	
DUNS	
DESCRIPTION OF PRINCIPAL OR CORE WORK AND/OR PRODUCT	
DOLLAR VALUE AND PERCENTAGE OF WORK AND/OR PRODUCT TO BE SUBCONTRACTED. (STATE THE PERCENTAGE BASED ON TOTAL SUBCONTRACT DOLLARS AND BASED ON TOTAL CONTRACT VALUE).	
SUPPORTING DOCUMENTATION (I.E., COPY OF CONTRACT WITH SMALL BUSINESS OR NOTIFICATION TO SMALL BUSINESS OF THEIR INCLUSION IN OFFEROR’S PROPOSAL)	

*Offeror to create additional tables as needed.*

**4. Method used to develop subcontracting goals**

Describe method used to develop the subcontracting goals and how the utilization of small business concerns correlates to the technical and cost proposals. If the offeror proposes goals that appear to be unusually high, the offeror may be required to provide supporting evidence of realism to demonstrate that the goals are achievable.

**5. Method used to identify potential sources**

Describe method used to identify potential sources for solicitation purposes. If the offeror identified or indicated a commitment to using specific small business concerns, the offeror shall identify the small businesses by name and include a copy of an enforceable signed agreement, contract, or evidence that the small businesses were notified of their inclusion in the offeror’s proposal.

**6. Indirect Cost**

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

**7. Program Administrator**

Provide required information about the employee who has general overall responsibility for the company's subcontracting program (i.e., developing, preparing, and executing subcontracting plans and monitoring performance relative to the requirements of those subcontracting plans).

Provide the name, title, address, telephone number, email, position title, position description or duties, and organizational placement.

Does the individual named above perform the duties identified in the survey below? if not, then provide the name, title, and contact information of the individual that does perform the duties.

Complete the following survey to describe the duties performed by the program administrator. If answered "no" to any of the questions, please provide explanation on a page(s).

Commerce Small Business Program

QUESTION	ANSWER
<p>A. DEVELOP AND PROMOTE COMPANY-WIDE INITIATIVES THAT DEMONSTRATE THE COMPANY’S SUPPORT FOR AWARDING CONTRACTS AND SUBCONTRACTS TO SB, SDB, WOSB, HUBZONE, VOSB, AND SDVOSB CONCERNS; AND FOR ASSURING THAT THESE CONCERNS ARE INCLUDED ON THE SOURCE LISTS FOR SOLICITATIONS FOR PRODUCTS AND SERVICES THEY ARE CAPABLE OF PROVIDING.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>B. DEVELOP AND MAINTAIN BIDDER SOURCE LIST OF SB, SDB, WOSB, HUBZONE, VOSB, AND SDVOSB CONCERNS FROM ALL POSSIBLE SOURCES.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>C. ENSURE PERIODIC ROTATION OF POTENTIAL SUBCONTRACTORS ON BIDDERS’ LISTS.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>D. ASSURE THAT SB, SDB, WOSB, HUBZONE, VOSB, AND SDVOSB CONCERNS ARE INCLUDED ON THE BIDDERS’ LIST FOR EVERY SUBCONTRACT SOLICITATION FOR PRODUCTS AND SERVICES THEY ARE CAPABLE OF PROVIDING.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>E. ENSURE THE REQUEST FOR PROPOSALS (RFP) ARE DESIGNED TO PERMIT THE MAXIMUM PRACTICABLE PARTICIPATION OF SB, SDB, WOSB, HUBZONE, VOSB, AND SDVOSB.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>F. REVIEW SUBCONTRACT SOLICITATIONS TO REMOVE STATEMENTS, CLAUSES, ETC., WHICH MIGHT TEND TO RESTRICT OR PROHIBIT SB, SDB, WOSB, HUBZONE, VOSB, AND SDVOSB PARTICIPATION.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>G. ACCESS VARIOUS SOURCES FOR THE IDENTIFICATION OF SB, SDB, WOSB, HUBZONE, VOSB, AND SDVOSB CONCERNS TO INCLUDE SBA’S DYNAMIC SMALL BUSINESS SEARCH AT <a href="http://dsbs.sba.gov">HTTP://DSBS.SBA.GOV</a>, AND THE SYSTEM FOR AWARDS MANAGEMENT AT WWW.SAM.GOV, LOCAL SMALL BUSINESS AND MINORITY ASSOCIATIONS, LOCAL CHAMBERS OF COMMERCE AND FEDERAL AGENCIES’ SMALL BUSINESS OFFICES.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>H. ESTABLISH AND MAINTAIN CONTRACT AND SUBCONTRACT AWARD RECORDS.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>I. PARTICIPATE IN BUSINESS OPPORTUNITY WORKSHOPS, MINORITY BUSINESS ENTERPRISE SEMINARS, TRADE FAIRS, PROCUREMENT CONFERENCES, ETC.</p>	<p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>

**Commerce Small Business Program**

QUESTION	ANSWER
J. ENSURE SB, SDB, WOSB, HUBZONE, VOSB, AND SDVOSB CONCERNS ARE MADE AWARE OF SUBCONTRACTING OPPORTUNITIES AND ASSIST CONCERNS IN PREPARING RESPONSIVE BIDS TO THE COMPANY.	<input type="radio"/> YES <input type="radio"/> NO
K. CONDUCT OR ARRANGE TRAINING FOR PURCHASING PERSONNEL REGARDING THE INTENT AND IMPACT OF SECTION 8(S) OF THE SMALL BUSINESS ACT, AS AMENDED.	<input type="radio"/> YES <input type="radio"/> NO
L. MONITORING THE COMPANY’S SUBCONTRACTING PROGRAM PERFORMANCE AND MAKING ANY ADJUSTMENTS NECESSARY TO ACHIEVE THE SUBCONTRACT PLAN GOALS.	<input type="radio"/> YES <input type="radio"/> NO
M. PREPARE AND SUBMIT TIMELY REQUIRED SUBCONTRACT REPORTS.	<input type="radio"/> YES <input type="radio"/> NO
N. COORDINATE THE COMPANY’S ACTIVITIES DURING COMPLIANCE REVIEWS BY FEDERAL AGENCIES.	<input type="radio"/> YES <input type="radio"/> NO

**8. Equitable Opportunity**

FAR 19.704 requires a description of the efforts your company will make to ensure that SB, SDB, WOSB, HUBZone, VOSB, and SBVOSB concerns will have an equitable opportunity to compete for subcontracts. (Check all that apply):

A. Outreach efforts to obtain sources:

- Contacting minority and small business trade associations
- Contacting business development organizations
- Attending small and minority business procurement conferences and trade fairs
- Reviewing sources from the Dynamic Small Business Search at <https://dsbs.sba.gov>
- Reviewing sources from the System for Awards Management at [www.sam.gov](http://www.sam.gov)
- Additional efforts: (Please describe): \_\_\_\_\_

B. Internal efforts to guide and encourage purchasing personnel:

- Conducting workshops, seminars and training programs
- Establishing, maintaining and using SB, SDB, WOSB, HUBZone, VOSB, and SBVOSB source lists, guides and other data for soliciting subcontractors
- Monitoring activities to evaluate compliance with the subcontracting plan.

C. Additional efforts: (Please describe) \_\_\_\_\_

## 9. Clause Inclusion and Flow Down

FAR 19.704 requires that your company include the provisions under FAR 52.219-8, Utilization of Small Business Concerns (see 19.708(a)) in all acquisitions exceeding the simplified acquisition threshold that offers further subcontracting opportunities. Your company must require all subcontractors, except small business concerns, that receive subcontracts in excess of \$700,000 (\$1.5 million for construction) to adopt and comply with a plan similar to the plan required by FAR 52.219-9, Small Business Subcontracting Plan.

Your company agrees that the clause will be included and that the plans will be reviewed against the minimum requirements for such plans. The acceptability of percentage goals for SB, SDB, WOSB, HUBZone, VOSB, and SBVOSB concerns must be determined on a case-by-case basis depending on the supplies and services involved, the availability of potential SB, SDB, WOSB, HUBZone, VOSB, and SBVOSB concerns as subcontractors and prior experience. Once the plans are negotiated, approved, and implemented, the plans must be monitored through the submission of individual and summary subcontracting reports via the federal government’s web-based Electronic Subcontracting Reporting System (eSRS) at <https://www.esrs.gov>.

## 10. Reporting and Cooperation

Your company agrees that it will—

- i. Cooperate in any studies or surveys that may be required;
- ii. Submit periodic reports which illustrate compliance with the subcontracting plan;
- iii. Submit its Individual Subcontracting Report (ISR) and Summary Subcontract Report (SSR); via the Electronic Subcontracting Reporting System (eSRS) website ([www.esrs.gov](http://www.esrs.gov));
- iv. Submit ISR and SSR when due:

<b>Contractor Deliverable Semi-Annual Reporting</b>		
<b>Report Type</b>	<b>Period Ending</b>	<b>Report Due</b>
Individual	March 30 <sup>th</sup>	April 30 <sup>th</sup>
	September 30 <sup>th</sup>	October 30 <sup>th</sup>
Individual - Corrected		Within 30 days of receiving notice of contracting officer’s rejection
Individual - Final		Within 30 days of contract completion
Summary	September 30 <sup>th</sup>	October 30 <sup>th</sup>
Summary – Corrected		Within 30 days of receiving notice of contracting officer’s rejection
Commercial	September 30 <sup>th</sup>	October 30 <sup>th</sup>

- i. Ensure that your company's subcontractors with subcontracting plans agree to—
  - (1) Submit the ISR and/or the SSR using eSRS;
  - (2) Provide its prime contract number, its unique entity identifier and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs.
  - (3) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans;

Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

The eSRS system does not allow companies to submit a separate report for each task order issued. Therefore, eSRS reporting for DOC IDIQ contracts will include the applicable information for each task order issued under the IDIQ contract. Contractors shall include a statement in the remarks section of eSRS to indicate the task order number and dollars awarded via the task order.

## 11. Record Keeping

In order to demonstrate your company's adherence to the requirement to maintain records that reflect your compliance with requirements and goals in the subcontracting plan, describe your company's records maintenance procedures for locating each category of small business for use as a subcontractor.

The records shall include at a minimum the following:

- A. Source lists, guides, and other data identifying small business concerns;
- B. Organizations contacted in an attempt to locate SB, SDB, WOSB, HUBZone, VOSB and SDVOSB sources;
- C. Records on each subcontract solicitation resulting in award over the simplified acquisition threshold, indicating whether SB, SDB, WOSB, HUBZone, VOSB and SDVOSB concerns were solicited, and if not, why not; and reasons for the failure of solicited SB, SDB, WOSB, HUBZone, VOSB and SDVOSB concerns to receive the subcontract award;
- D. Records to support any outreach efforts (e.g., contacts with minority and small business trade associates, attendance at small and minority business procurement conference and trade fairs, etc.);

- E. Records to support internal activities and encouragement provided to buyers through (1) workshops, seminars, training programs, and (2) monitor activities to evaluate compliance with the program's requirements;
- F. Records to support subcontract award data including the name, address and business size of each subcontractor; and
- G. Other records to support your compliance with the subcontracting plan.

**12. Description of Good Faith Effort**

Maximum practicable utilization of SB, SDB, WOSB, HUBZone, VOSB and SDVOSB concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved and 15 U.S.C. 637(d) (4) (F) directs that liquidated damages shall be paid by the contractor.

Describe the steps your company will take to utilize socioeconomic small business and small business concerns to the maximum extent practicable to demonstrate your compliance with good faith effort to achieve the SB, SDB, WOSB, HUBZone, VOSB and SDVOSB subcontracting goals. These steps will be reviewed by the contracting officer and negotiated. If warranted, prior to approval of the plan.

**13. Failure of Good Faith Effort**

Your company agrees that it will provide a written explanation to the contracting officer if it fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as you described in your answer to item no. 12 above. Your written explanation will be submitted to the contracting officer within 30 days of contract completion.

**14. Subcontractors Not Prohibited from Contacting the Contracting Officer**

Describe procedures to ensure subcontractors will not be prohibited from discussing with the contracting officer any material matter pertaining to payment to or utilization of a subcontractor

**15. Timely Payments to Subcontractors**

Your company agrees to notify the contracting officer if you pay a reduced or an untimely payment to a small business subcontractor. Describe procedures to ensure the timely payment of amounts due pursuant to the terms of your subcontracts with SB, SDB, WOSB, HUBZone, VOSB and SDVOSB concerns.

Describe procedures to notify SB, SDB, WOSB, HUBZone, VOSB, and SDVOSB that additional assistance related to payment issues is available from the bureau small business specialist or representative from the OSD BU.

### 16. Required Signatures

This subcontracting plan was **submitted** by:

Signature: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Date: \_\_\_\_\_

This subcontracting plan was **reviewed and accepted** by:

Signature: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: **Contracting Officer**  
Bureau/Office: \_\_\_\_\_  
Date: \_\_\_\_\_

This subcontracting plan was **reviewed and concurred with** by:

Signature: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: **Small Business Specialist**  
Bureau/Office: \_\_\_\_\_  
Date: \_\_\_\_\_

This subcontracting plan was reviewed and concurred with by:

Signature: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: **U.S. Small Business Administration Representative**  
Date: \_\_\_\_\_

This subcontracting plan was **reviewed and concurred with** by:

Signature: \_\_\_\_\_  
Typed Name: **LaJuene Desmukes**  
Title: **Director**  
Bureau/Office: **Office of Small and Disadvantaged Business Utilization**  
Date: \_\_\_\_\_



**Justification and Approval Process  
For Other Than Full and Open Competition  
(And Limited Sources)**

The table below cross-references the Justification and Approval (J&A) process for any action not slated for small business award with DOC policies, FAR, 13 CFR, and statute. The approved J&A is required to be included as part of the CD-570 supporting documentation.

Procedures	Threshold	FAR Designation	CAM Designation	CSBPM Designation	Policy Reference	Regulatory Reference	Statutory Reference
<b>Other Than Full and Open Competition</b>	Below \$700,000	Contracting Officer	Operating Unit/ Bureau Competition Advocate	Small Business Specialist	CAM 1301.70  CAM 1306.70  CSBPM – Chapter 1	FAR 6.3  13 CFR	41.U.S.C. 3304(a)(1); 41.U.S.C. 3304(a)(2); 41.U.S.C. 3304(a)(3); 41.U.S.C. 3304(a)(4); 41.U.S.C. 3304(a)(5); 41.U.S.C. 3304(a)(6)
	\$150,000 < \$700,000	Contracting Officer	Operating Unit/ Bureau Competition Advocate	Small Business Specialist PCR OSDBU Director			
	>\$13.5 million < \$68 million	Procuring Activity Competition Advocate	DOC Competition Advocate	Small Business Specialist PCR OSDBU Director			
	>\$68 million	Senior Procurement Executive	Senior Procurement Executive	Small Business Specialist PCR OSDBU Director			

*--Courtesy of NIST Acquisition Policy Office*

Commerce Small Business Program

Procedures	Threshold	FAR Designation	CAM Designation	CSBPM Designation	Policy Reference	Regulatory Reference	Statutory Reference
<b>Unusual and Compelling Urgency Limiting Sources</b>	In addition to the thresholds identified in FAR 6.304, the award may not exceed one year, including all options, unless the head of the agency determines that exceptional circumstances apply.	Head of the agency (Secretary)	Senior Procurement Executive	Small Business Specialist PCR OSDBU Director	CAM 1301.70 CSBPM – Chapter 1	FAR 6.302-2(d)(1)(ii)	41.U.S.C. 3304(a)(2)
<b>Public Interest</b>	In addition to the thresholds identified in FAR 6.304, the contracting officer shall prepare a D&F to support statement of facts that it is not in the public interest to conduct full and open competition	Head of the agency (Secretary)	HA (may not be delegated)		CAM 1306.70 CAM 1301.70	FAR 6.302-7	41 U.S.C. 3304(a)(7)

--Courtesy of NIST Acquisition Policy Office