

support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to FAR part 12, from evaluation during a CPSR.

Item VI—Contract Quality Requirements

[FAR Case 96-009]

This final rule amends FAR 46.202-4, 46.311, and 52.246-11 to replace references to Government specifications with references to commercial quality standards as examples of higher-level contract quality requirements; to require the contracting officer to indicate in the solicitation which higher-level quality standards will satisfy the Government's requirement; and, if more than one standard is listed in the solicitation, to require the offeror to indicate its selection by checking a block.

Item VII—Mandatory Government Source Inspection

[FAR Case 97-027]

This final rule amends FAR 46.402 to facilitate the elimination of unnecessary requirements for Government contract quality assurance at source. This rule deletes the mandatory requirements for Government contract quality assurance at source on all contracts that include a higher-level contract quality requirement, and for supplies requiring inspection that are destined for overseas shipment.

Item VIII—No-Cost Value Engineering Change Proposals

[FAR Case 96-011]

The interim rule published as Item X of FAC 97-05 is converted to a final rule without change. The rule revises FAR 48.104-3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Item IX—Evidence of Shipment in Electronic Data Interchange (EDI) Transactions

[FAR Case 97-011]

This final rule revises the clause at FAR 52.247-48 to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased on a free on board (f.o.b.) destination basis with inspection and acceptance at origin.

Item X—Technical Amendments

Amendments are being made at FAR 1.106, 19.102, 19.502-5, 32.908, 37.602-3, 42.203, 52.212-5, 52.219-9, 52.222-37, 53.228 and 53.301 in order to update references and make editorial changes.

Dated: December 14, 1998.

Ralph DeStafano,

Acting Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

FAC 97-10

Federal Acquisition Circular (FAC) 97-10 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-10 are effective February 16, 1999, except for Item VIII which is effective December 18, 1998, and Items I and X which are effective January 4, 1999.

Dated: December 14, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: December 11, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

Dated: December 11, 1998.

[FR Doc. 98-33512 Filed 12-16-98; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

[FAC 97-10; FAR Case 97-307; Item I]

RIN 9000-AI20

Federal Acquisition Regulation; Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revisions made to Small Business Administration (SBA) regulations covering the Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program (hereinafter referred to as the HUBZone Program).

EFFECTIVE DATE: January 4, 1999.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 16, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-307@gsa.gov

Please cite FAC 97-10, FAR case 97-307 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-10, FAR case 97-307.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 to comply with the SBA's HUBZone Program regulations contained in 13 CFR parts 121, 125, and 126 (63 FR 31896, June 11, 1998). The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in distressed communities in an effort to increase employment opportunities, investment, and economic development in these communities. The Program provides for set-asides for firms that meet the definition of a HUBZone small business concern (SBC), sole source awards to HUBZone SBCs, and price evaluation preferences for HUBZone SBCs in acquisitions conducted using full and open competition; and establishes a Governmentwide goal for HUBZone awards. Until September 30, 2000, ten Government agencies are required to comply with the prime contract HUBZone Program. After that date, the Program will apply to all Federal

agencies employing one or more contracting officers.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these zones. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

It is anticipated that the HUBZone Program will benefit small business concerns by increasing the number of Government contracts awarded to them. There is a statutory goal for Government HUBZone small business concerns to receive 3 percent of contract dollars by fiscal year 2003. The HUBZone Act of 1997, Title VI of Public Law 105-135, 111 Stat. 2592 (December 2, 1997), created the HUBZone Program and directed the Administrator of the Small Business Administration (SBA) to promulgate regulations to implement it. This rule further implements the SBA rule. The small entities affected by this rule are those that fit within the definition of a small business concern, as defined by SBA in 13 CFR part 121 and new part 126, and that participate in Government contracting. Because the program is new, we cannot estimate precisely the number or classes of small entities that this rule will affect. However, the SBA estimated that more than 30,000 small businesses will apply for certification as qualified HUBZone small business concerns. This rule requires that a firm be listed on SBA's list of eligible HUBZone small business concerns in order to receive a contracting preference. That requirement is addressed in SBAs rule. This FAR rule requires that Government prime contractors with contracts that require subcontracting plans seek out HUBZone small business concerns as subcontractors as well as maintain records and report on those subcontracts awarded to HUBZone small business concerns. These requirements do not apply to small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. In general, the drafters of this rule modeled its procurement mechanisms, to the extent permitted by the SBA rule, on those already in use within the Federal Government. This approach should make the requirements of the rule immediately familiar to many small businesses that already have extensive experience in dealing with Government contracting offices. Moreover, each

individual mechanism was structured to strike an appropriate balance between the interests of HUBZone and non-HUBZone small businesses, and to minimize the overall burden of compliance on small business.

A copy of the analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite FAR case 97-307 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the interim rule contains information collection requirements. The interim rule increases the collection requirements currently approved under OMB Control Numbers 9000-0006 and 9000-0007.

OMB Control No. 9000-0006 burden hours have increased from 428,035 to 640,837 to reflect the additional burden of planning, maintaining and reporting subcontract award data on HUBZone small businesses. In addition, burden inappropriately attached to OMB Control No. 9000-0007 that related to planning and maintaining data was transferred to this clearance. OMB Control No. 9000-0007 burden hours have been adjusted to remove hours inappropriately included in this clearance and to add hours to reflect the additional burden associated with reporting HUBZone data. The net difference is an increase, from 90,924 to 91,570 hours. The appropriate paperwork has been forwarded to OMB.

D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under ADDRESSES. Please cite the corresponding OMB Clearance Number in all correspondence related to the estimate.

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to conform the Federal Acquisition Regulation to revisions made in 13 CFR parts 121, 125, and 126 on June 11, 1998, pertaining to the Small Business Administration (SBA) HUBZone Program. The SBA final rule became effective on September 9, 1998. Section 605 of the Small Business Reauthorization Act of 1997 (Title VI of Public Law 105-135) requires that, 180 days after the SBA issues its final regulations to carry out the HUBZone Program, conforming amendments must be made to the Federal Acquisition Regulation (December 8, 1998). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53

Government procurement.

Dated: December 14, 1998.

Ralph DeStefano,

Acting Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 7, 8, 12, 13, 14, 15, 19, 26, 52, and 53 continues to read as follows:

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

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by revising paragraph (d) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

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

* * * * *

PART 6—COMPETITION REQUIREMENTS

3. Section 6.205 is added to read as follows:

6.205 Set-asides for HUBZone small business concerns.

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 (15 U.S.C. 631 note), contracting officers in participating agencies (see 19.1302) may set aside solicitations to allow only qualified HUBZone small business concerns to compete (see 19.1305).

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

4. Section 6.302-5 is amended by adding paragraph (b)(6) to read as follows:

6.302-5 Authorized or required by statute.

* * * * *

(b) * * *

(6) Sole source awards under the HUBZone Act of 1997—15 U.S.C. 657a (see 19.1306).

* * * * *

PART 7—ACQUISITION PLANNING

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

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action*—(1) *Sources*. * * * Include consideration of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19). * * *

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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

8.404 Using schedules.

(a) *General*. When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of part 13, the small business set-aside provisions of subpart 19.5, and the HUBZone program of subpart 19.13 do not apply, except for the provision at 13.303-2(c)(3). * * *

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

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

9.104-3 Application of standards.

* * * * *

(b) * * * If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

8. Section 12.301 is amended at the end of paragraph (b)(2) by removing the semicolon and adding a period; and adding a sentence to read as follows:

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

* * * * *

(b) * * *

(2) * * * Use the provision with its Alternate III in solicitations issued by Federal agencies subject to the requirements of the HUBZone Act of 1997 (see 19.1302);

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

9. Section 13.003 is amended by redesignating paragraph (b)(2) as (b)(3) and adding a new paragraph (b)(2) to read as follows:

13.003 Policy.

* * * * *

(b) * * *

(2) The contracting officer may set aside for HUBZone small business concerns (see 19.1305) an acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 and not exceeding the simplified acquisition threshold. The contracting officer's decision not to set aside an acquisition for HUBZone participation below the simplified acquisition threshold is not subject to review under subpart 19.4.

* * * * *

10. Section 13.005 is amended by adding paragraph (a)(9) to read as follows:

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) * * *

(9) 15 U.S.C. 631 note (HUBZone Act of 1997), except for 15 U.S.C. 657a(b)(2)(B), which is optional for the agencies subject to the requirements of the Act.

* * * * *

PART 14—SEALED BIDDING

14.206 [Reserved]

11. Section 14.206 is removed and reserved.

12. Section 14.502 is amended by redesignating paragraph (b)(5) as (b)(6) and adding a new paragraph (b)(5) to read as follows:

14.502 Conditions for use.

* * * * *

(b) * * *

(5) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see subpart 19.13).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

13. Section 15.503 is amended by revising paragraph (a)(2) to read as follows:

15.503 Notifications to unsuccessful offerors.

(a) * * *

(2) *Preward notices for small business programs*. (i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award, upon completion of negotiations, determinations of responsibility, and, if necessary, the process in 19.304(d)—

(A) When using a small business set-aside (see subpart 19.5);

(B) When a small disadvantaged business concern receives a benefit based on its disadvantaged status (see subpart 19.11 and 19.1202) and is the apparently successful offeror; or

(C) When using the HUBZone procedures in 19.1305 or 19.1307.

(ii) The notice shall state—

(A) The name and address of the apparently successful offeror;

(B) That the Government will not consider subsequent revisions of the offeror's proposal; and

(C) That no response is required unless a basis exists to challenge the small business size status, disadvantaged status, or HUBZone status of the apparently successful offeror.

(iii) The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered

into under the 8(a) program (see 19.805-2).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

14. Section 19.000 is amended by revising paragraphs (a)(3) and (a)(8) to read as follows:

19.000 Scope of part.

(a) * * *

(3) Setting acquisitions aside for exclusive competitive participation by small business concerns and HUBZone small business concerns, and sole source awards to HUBZone small business concerns;

* * * * *

(8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns; and

* * * * *

15. Section 19.001 is amended by adding, in alphabetical order, the definitions "HUBZone" and "HUBZone small business concern" to read as follows:

19.001 Definitions.

* * * * *

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

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

* * * * *

16. Section 19.201 is amended by revising the first sentence of paragraph (a); in paragraph (c) by removing the words "small, small disadvantaged and women-owned"; and revising paragraphs (d)(4), (d)(6), (d)(7)(ii), (d)(8), and (d)(9) to read as follows:

19.201 General policy.

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

* * * * *

(d) * * *

(4) Be responsible for the agency carrying out the functions and duties in

sections 8, 15, and 31 of the Small Business Act.

* * * * *

(6) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15, and 31 of the Small Business Act.

(7) * * *

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8, 15, and 31 of the Small Business Act;

(8) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8, 15, and 31 of the Small Business Act;

(9) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart 19.5 as a small business set-aside, under subpart 19.8 as a Section 8(a) award, or under subpart 19.13 as a HUBZone set-aside.

* * * * *

19.202 [Amended]

17. Section 19.202 is amended in the first sentence by removing "Subpart 19.5 or 19.8" and adding "subpart 19.5, 19.8, or 19.13."

18. Section 19.202-2 is amended by revising the introductory paragraph; and in paragraph (a) by adding "and HUBZones" after the word "areas". The revised text reads as follows:

19.202-2 Locating small business sources.

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

* * * * *

19. Section 19.202-4 is amended by revising the introductory paragraph to read as follows:

19.202-4 Solicitation.

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

* * * * *

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

19.202-5 Data collection and reporting requirements.

* * * * *

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

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

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

19.202-6 Determination of fair market price.

(a) The fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404-1(b) for—

(1) Total and partial small business set-asides (see subpart 19.5);

(2) HUBZone set-asides (see subpart 19.13);

(3) Contracts utilizing the price evaluation adjustment for small disadvantaged business concerns (see subpart 19.11); and

(4) Contracts utilizing the price evaluation preference for HUBZone small business concerns (see subpart 19.13).

* * * * *

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

22. The heading of Subpart 19.3 is revised to read as set forth above.

23. Section 19.301 is amended by revising the first sentence of paragraph (d) to read as follows:

19.301 Representation by the offeror.

* * * * *

(d) If the SBA determines that the status of a concern as a small business, HUBZone small business, small disadvantaged business, or women-owned small business has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of

Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Section 16(d) of the Act. * * *

24. Section 19.306 is redesignated as 19.307; and a new 19.306 is added to read as follows:

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

(a) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone small business status. For all other acquisitions, an offeror, the contracting officer, or the SBA may protest the apparently successful offeror's HUBZone small business concern status.

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

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

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

(e) Except for premature protests, the contracting officer shall forward any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely, to: AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

(f) SBA will determine the HUBZone status of the protested HUBZone small business concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the

apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

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

(h) The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's ADA/GC&8(a)BD. The ADA/GC&8(a)BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the 5-day period.

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

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

(k) The ADA/GC&8(a)BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The ADA/GC&8(a)BD's decision is the final decision.

24a. In newly redesignated 19.307, the section heading and paragraph (a) are revised to read as follows:

19.307 Solicitation provision.

(a)(1) The contracting officer shall insert the provision at 52.219-1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United

States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(2) The provision shall be used with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard that are expected to exceed the threshold at 4.601(a).

(3)(i) The provision shall be used with its Alternate II in solicitations issued by the following agencies on or before September 30, 2000:

- (A) Department of Agriculture.
- (B) Department of Defense.
- (C) Department of Energy.
- (D) Department of Health and Human Services.
- (E) Department of Housing and Urban Development.
- (F) Department of Transportation.
- (G) Department of Veterans Affairs.
- (H) Environmental Protection Agency.
- (I) General Services Administration.
- (J) National Aeronautics and Space Administration.

(ii) The provision shall be used with its Alternate II in solicitations issued by all Federal agencies after September 30, 2000.

* * * * *

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

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(1) Reviewing proposed acquisitions to recommend—

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

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

(iii) Breakout of components for competitive acquisitions.

* * * * *

26. Section 19.501 is amended—

(a) In the third and fourth sentences of paragraph (a) by adding "small business" after the word "A" in each instance;

(b) In the first sentence of paragraph (b) by adding "small business" after the word "a"; and in the second and third sentences by removing the word "which" and adding "that" in each instance; and

(c) By redesignating paragraphs (c) through (g) as (d) through (h), respectively; adding a new paragraph (c); and by revising newly designated paragraphs (d) and (h) to read as follows:

19.501 General.

* * * * *

(c) For acquisitions exceeding the simplified acquisition threshold, the requirement to set aside an acquisition for HUBZone small business concerns (see 19.1305) takes priority over the requirement to set aside the acquisition for small business concerns.

(d) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency's small business programs. The contracting officer shall document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless a HUBZone small business set-aside or HUBZone small business sole source award is anticipated. If the acquisition is set aside for small business based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.

* * * * *

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

27. Section 19.502-1 is revised to read as follows:

19.502-1 Requirements for setting aside acquisitions.

(a) The contracting officer shall set aside an individual acquisition or class of acquisitions for competition among small businesses when—

(1) It is determined to be in the interest of maintaining or mobilizing the Nations full productive capacity, war or national defense programs; or

(2) Assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns; and the circumstances described in 19.502-2 or 19.502-3(a) exist.

(b) This requirement does not apply to purchases of \$2,500 or less, or purchases from required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely disabled, and Federal Supply Schedule contracts).

28. Section 19.502-2 is amended by revising the section heading; in the first sentence of paragraph (a) by adding "for small business" after the word "aside"; and revising the last sentence; in the first sentence of paragraph (c) by adding "small business" after the word "For", and removing the word "which" and

adding "that"; and in paragraph (d) by adding "small business" after the word "when". The revised text reads as follows:

19.502-2 Total small business set-asides.

(a) * * * The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under Subpart 19.8, Contracting with the Small Business Administration, under 19.1006(c), Emerging small business set-aside, or under 19.1305, HUBZone set-aside procedures.

* * * * *

19.502-4 [Amended]

29. Section 19.502-4 is amended in the first sentence of paragraph (a) by adding "small business" after the word "Total".

19.502-5 [Amended]

30. Section 19.502-5 is amended in the second sentences of paragraphs (b) and (c) by adding "small business" after the word "total" in each instance; and in paragraph (g) by adding "small business" after the word "class".

31. Section 19.503 is amended by revising the section heading to read as set forth below; in the second sentence of paragraph (a) by adding "small business" after the word "class"; in paragraph (b) by adding "for small business" after the word "acquisitions"; in paragraph (c) introductory text by adding "small business" after the word "class"; and in the first sentence of paragraph (d) by adding "small business" after the word "class" both times it appears.

19.503 Setting aside a class of acquisitions for small business.

32. Section 19.506 is amended by revising the section heading, paragraph (a), the last sentence of paragraph (b), and paragraph (c) to read as follows:

19.506 Withdrawing or modifying small business set-asides.

(a) If, before award of a contract involving a small business set-aside, the contracting officer considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the small business set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual small business set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class

small business set-aside to withdraw one or more individual acquisitions.

(b) * * * However, the procedures are not applicable to automatic dissolutions of small business set-asides (see 19.507) or dissolution of small business set-asides under \$100,000.

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

33. Section 19.507 is amended by revising the section heading to read as set forth below; and in the first sentence of paragraph (a) by adding "small business" after the word "a".

19.507 Automatic dissolution of a small business set-aside.**Subpart 19.7—The Small Business Subcontracting Program**

34. The heading of Subpart 19.7 is revised to read as set forth above.

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

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold shall agree in the contract that small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

* * * * *

(b) * * *

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8, Utilization of Small Business Concerns (or equivalent prior clauses; e.g., contracts awarded before the enactment of Public Law 95-507).

* * * * *

36. Section 19.703 is amended by revising the introductory text of paragraph (a) and (a)(1); in paragraph (b) by revising the first sentence and adding a sentence to the end of the paragraph to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must

represent itself as a small business, HUBZone small business, small disadvantaged business, or woman-owned small business concern.

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

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, HUBZone small business, or women-owned small business concern. * * * Protests challenging HUBZone small business concern status shall be filed in accordance with 13 CFR 126.800.

37. Section 19.704 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(6), (a)(8), (a)(9), (a)(11), and the first sentence of paragraph (b) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

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

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

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

* * * * *

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

* * * * *

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

(9) Assurances that the offeror will include the clause at 52.219-8,

Utilization of Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan (see 19.708(b));

* * * * *

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

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see 19.701) that contains all the elements required by the clause at 52.219-9, Small Business Subcontracting Plan, except goals. * * *

* * * * *

38. Section 19.705-2 is amended by revising the last sentence of paragraph (d) to read as follows:

19.705-2 Determining the need for a subcontracting plan.

* * * * *

(d) * * * In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns to participate, and the burden placed on offerors.

39. Section 19.705-4 is amended by revising the last sentence of paragraph (b), the second and last sentences of paragraph (c), the first sentence of paragraph (d)(1), (d)(5), and the first sentence of paragraph (d)(6) to read as follows:

19.705-4 Reviewing the subcontracting plan.

* * * * *

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

(c) * * * Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors to the maximum practicable extent. * * * An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small business, HUBZone small business, or women-owned small business concerns.

(d) * * *

(1) Obtain information available from the cognizant contract administration office, as provided for in 19.706(a), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. * * *

* * * * *

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

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

* * * * *

40. Section 19.705-6 is amended by revising paragraphs (a) and (b) to read as follows:

19.705-6 Postaward responsibilities of the contracting officer.

* * * * *

(a) Notifying the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA area office where the contract will be performed.

(b) Forwarding a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA

area office where the contractor's headquarters is located.

* * * * *

41. Section 19.705-7 is amended in the first sentence of paragraph (a), and in the third and fourth sentences of paragraph (d) by removing the words "small, small disadvantaged" and adding "small business, HUBZone small business, small disadvantaged business," in each instance; and revising the introductory text of paragraph (f) to read as follows:

19.705-7 Liquidated damages.

* * * * *

(f) With respect to commercial plans approved under the clause at 52.219-9, Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

* * * * *

42. Section 19.706 is amended by revising paragraphs (b) and (c) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

* * * * *

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

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

* * * * *

43. Section 19.708 is amended by revising the section heading; in the introductory text of paragraph (a) by removing the words "Small, Small Disadvantaged and Women-Owned"; by revising paragraph (b); and in paragraphs (c)(1), (c)(2), and (c)(3) by adding "business, HUBZone small business," after the word "small" the first time it is used. The revised text reads as follows:

19.708 Contract clauses.

* * * * *

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns, unless the acquisition is set aside or is

to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I. When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small Business Subcontracting Plan, or the clause with its Alternate I or II.

* * * * *

44. Section 19.800 is amended by adding paragraph (d) to read as follows:

19.800 General.

* * * * *

(d) Before deciding to set aside an acquisition in accordance with subpart 19.5 or 19.13, the contracting officer should review the acquisition for offering under the 8(a) Program. In making this decision, contracting officers in participating agencies (see 19.1302) are advised that SBA will give first priority to HUBZone 8(a) concerns.

19.803 [Amended]

45. Section 19.803 is amended at the end of paragraph (c) by removing the period and adding "(but see 19.800(d))."

46. Section 19.804-2 is amended by revising paragraph (a)(12) to read as follows:

19.804-2 Agency offering.

(a) * * *

(12) Identification of all known 8(a) concerns, including HUBZone 8(a) concerns, that have expressed an interest in this specific requirement as a result of self-marketing, response to sources sought, or publication of advanced acquisition requirements.

* * * * *

47. Section 19.1006 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

19.1006 Procedures.

* * * * *

(b) *Designated industry groups.* (1) * * * Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) Program (see subpart 19.8) and the HUBZone Program (see subpart 19.13).

* * * * *

48. Section 19.1102 is amended by revising paragraph (b) to read as follows:

19.1102 Applicability.

* * * * *

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

- (1) Are less than or equal to the simplified acquisition threshold;
- (2) Are awarded pursuant to the 8(a) Program;
- (3) Are set aside for small business concerns; or
- (4) Are set aside for HUBZone small business concerns.

49. Section 19.1202-2 is amended by revising paragraph (b)(1) to read as follows:

19.1202-2 Applicability.

* * * * *

(b) * * *

(1) Small business set-asides (see subpart 19.5) and HUBZone set-asides (see subpart 19.13);

* * * * *

50. Subpart 19.13, consisting of sections 19.1301 through 19.1308, is added to read as follows:

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

Sec.

- | | |
|---------|--|
| 19.1301 | General. |
| 19.1302 | Applicability. |
| 19.1303 | Status as a qualified HUBZone small business concern. |
| 19.1304 | Exclusions. |
| 19.1305 | HUBZone set-aside procedures. |
| 19.1306 | HUBZone sole source awards. |
| 19.1307 | Price evaluation preference for HUBZone small business concerns. |
| 19.1308 | Contract clauses. |

Authority: 41 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the "HUBZone Empowerment Contracting Program").

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

19.1302 Applicability.

(a) Until September 30, 2000, the procedures in this subpart apply only to acquisitions made by the following Federal agencies:

- (1) Department of Agriculture.
- (2) Department of Defense.

- (3) Department of Energy.
- (4) Department of Health and Human Services.
- (5) Department of Housing and Urban Development.
- (6) Department of Transportation.
- (7) Department of Veterans Affairs.
- (8) Environmental Protection Agency.
- (9) General Services Administration.
- (10) National Aeronautics and Space Administration.

(b) On or after September 30, 2000, the procedures in this subpart will apply to all Federal agencies that employ one or more contracting officers.

19.1303 Status as a qualified HUBZone small business concern.

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

(b) If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at <http://www.sba.gov/hubzone>. The concern must appear on the list to be a HUBZone small business concern.

(c) A joint venture (see 19.101) may be considered a HUBZone small business if the business entity meets all the criteria in 13 CFR 126.616.

(d) Except for construction or services, any HUBZone small business concern (nonmanufacturer) proposing to furnish a product that it did not itself manufacture must furnish the product of a HUBZone small business concern manufacturer to receive a benefit under this subpart.

19.1304 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see subpart 8.6); or

(2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see subpart 8.7);

(b) Orders under indefinite delivery contracts (see subpart 16.5);

(c) Orders against Federal Supply Schedules (see subpart 8.4);

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(e) Requirements that do not exceed the micro-purchase threshold; or

(f) Requirements for commissary or exchange resale items.

19.1305 HUBZone set-aside procedures.

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

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

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

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

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

(e) The procedures at 19.202-1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section. When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and

compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

19.1306 HUBZone sole source awards.

(a) A participating agency contracting officer may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides (see subpart 19.5), provided—

(1) Only one HUBZone small business concern can satisfy the requirement;

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

(i) \$5,000,000 for a requirement within the Standard Industrial Classification (SIC) codes for manufacturing; or

(ii) \$3,000,000 for a requirement within any other SIC code;

(3) The requirement is not currently being performed by a non-HUBZone small business concern;

(4) The acquisition is greater than the simplified acquisition threshold (see part 13);

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

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

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

19.1307 Price evaluation preference for HUBZone small business concerns.

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

(1) In acquisitions expected to be less than or equal to the simplified acquisition threshold;

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

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

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

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

(2) Otherwise successful offers from small business concerns;

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

(4) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government (see agency supplement).

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

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

19.1308 Contract clauses.

(a) The contracting officer shall insert the clause 52.219-3, Notice of Total HUBZone Set-Aside, in solicitations and contracts for acquisitions that are set aside for HUBZone small business concerns under 19.1305 or 19.1306.

(b) The contracting officer shall insert the clause at 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition. The clause shall not be used in acquisitions that do not exceed the simplified acquisition threshold.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.104 [Amended]

51. Section 26.104 is amended in paragraph (a) by removing the words "Small, Small Disadvantaged and Women-Owned".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52. Section 52.212-3 is amended by adding Alternate III following Alternate II to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Alternate III (Jan 1999). As prescribed in 12.301(b)(2), add the following paragraph (c)(9) to the basic provision:

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

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

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(9)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:* _____.] Each

HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

53. Section 52.212-5 is amended in the clause by revising (b)(3) and (b)(4); redesignating (b)(9) through (b)(20) as (b)(12) through (b)(23), respectively; and adding new paragraphs (b)(9), (b)(10), and (b)(11) to read as follows:

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

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jan. 1999)

* * * * *

(b) * * *

— (3) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

— (4) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4)).

* * * * *

— (9) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999).

— (10) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

— (11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

* * * * *

54. Section 52.219-1 is amended by revising the introductory paragraph; in the introductory text of Alternate I by revising "19.306(a)(1)" to read "19.307(a)(1)"; and adding Alternate II following Alternate I to read as follows:

52.219-1 Small Business Program Representations.

As prescribed in 19.307(a)(1), insert the following provision:

* * * * *

Alternate II (Jan 1999). As prescribed in 19.307(a)(3), add the following paragraph (b)(5) to the basic provision:

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

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

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(5)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:* _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

52.219-2 [Amended]

55. Section 52.219-2 is amended in the introductory text by revising "19.306(c)" to read "19.307(c)".

56. Sections 52.219-3 and 52.219-4 are added to read as follows:

52.219-3 Notice of total HUBZone set-aside.

As prescribed in 19.1308(a), insert the following clause:

Notice of Total HUBZone Set-Aside (Jan 1999)

(a) *Definition.* *HUBZone small business concern*, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

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

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

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

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

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

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

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

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

(e) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.219-4 Notice of price evaluation preference for HUBZone small business concerns.

As prescribed in 19.1308(b), insert the following clause:

Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999)

(a) *Definition.* *HUBZone small business concern*, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

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

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

(ii) Otherwise successful offers from small business concerns;

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

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

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other

evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

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

□ Offeror elects to waive the evaluation preference.

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

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

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

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

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

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

57. Section 52.219-8 is revised to read as follows:

52.219-8 Utilization of small business concerns.

As prescribed in 19.708(a), insert the following clause:

Utilization of Small Business Concerns (Jan 1999)

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

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

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

(1) *Small business concern* means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) *HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) *Small business concern owned and controlled by socially and economically disadvantaged individuals* means an offeror that represents, as part of its offer, that—

(i) It is a small business under the size standard applicable to the acquisition;

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

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

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

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

(4) *Small business concern owned and controlled by women* means a small business concern—

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

(ii) Whose management and daily business operations are controlled by one or more women; and

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

58. Section 52.219-9 is amended—

a. By revising the section and clause headings;

b. By revising the first and second sentences of paragraph (c);

c. By revising the first sentence of paragraph (d)(1);

d. By redesignating (d)(2)(iii) and (d)(2)(iv) as (d)(2)(iv) and (d)(2)(v) and adding a new (d)(2)(iii);

e. By revising paragraph (d)(3);

f. In the first sentence of paragraph (d)(5) by adding "HUBZone small," after the words "or small,";

g. By revising paragraph (d)(6);

h. In paragraph (d)(8) by adding "business, HUBZone small business," after the words "that small"; and adding "business," after "small disadvantaged";

i. In paragraph (d)(9) by removing the word "in" the first time it is used and adding "of" in its place; and removing the words "Small, Small Disadvantaged and Women-Owned";

j. By revising paragraph (d)(11);

k. By revising paragraphs (e)(1), (e)(2), (e)(3), and (e)(4);

l. In paragraph (i)(1) by removing the words "Small, Small Disadvantaged and Women-Owned"; and

m. By revising Alternates I and II to read as follows:

52.219-9 Small business subcontracting plan.

* * * * *

Small Business Subcontracting Plan (Jan 1999)

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). * * *

(d) * * *

(1) Goals, expressed in terms of percentages of total planned subcontracting

dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors.

* * *

(2) * * *

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

* * * * *

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

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

* * * * *

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

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

* * * * *

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

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

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

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

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

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

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

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

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

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations; and

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

(v) Records of internal guidance and encouragement provided to buyers through—
(A) Workshops, seminars, training, etc.; and

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

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) * * *

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

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

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

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

* * * * *

Alternate I (Jan 1999). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

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

the bidder ineligible for the award of a contract.

Alternate II (Jan 1999). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

59. Section 52.219-10 is amended by revising paragraph (a) of the clause; and in the first sentence of paragraph (b) by removing "concerns" the first time it is used and adding "HUBZone small

business," in its place. The revised text reads as follows:

52.219-10 Incentive Subcontracting Program.

* * * * *

Incentive Subcontracting Program (Jan 1999)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

* * * * *

52.219-16 [Amended]

60. Section 52.219-16 is amended by revising the date of the clause to read "(JAN 1999)"; and in paragraph (a) and the second sentence of paragraph (b) of the clause by removing the words "Small, Small Disadvantaged and Women-Owned".

52.219-22 [Amended]

61. Section 52.219-22 is amended in the introductory paragraph by revising "19.306(b)" to read "19.307(b)".

52.226-1 [Amended]

62. Section 52.226-1 is amended by revising the date of the clause to read "(JAN 1999)"; and in paragraph (a) of the clause by removing the words "Small, Small Disadvantaged and Women-Owned".

PART 53—FORMS

63. Section 53.219 is amended by revising paragraph (a); and in paragraph (b) by revising the revision date of the form to read "(Rev. 12/98)".

53.219 Small business programs.

* * * * *

(a) *SF 294 (Rev. 12/98), Subcontracting Report for Individual Contracts.* (See 19.704(a)(10).) SF 294 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the loose-leaf edition of the FAR.

* * * * *

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

53.301-294 Subcontracting Report for Individual Contracts.

BILLING CODE 6820-EP-P

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

 OMB No.: 9000-0006
 Expires: 04/30/2001

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED		
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30 YEAR		
b. STREET ADDRESS					
c. CITY	d. STATE	e. ZIP CODE	5. TYPE OF REPORT		
2. CONTRACTOR IDENTIFICATION NUMBER			<input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED		
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>					
<input type="checkbox"/> ARMY		<input type="checkbox"/> GSA		<input type="checkbox"/> NASA	
<input type="checkbox"/> NAVY		<input type="checkbox"/> DOE		<input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i>	
<input type="checkbox"/> AIR FORCE		<input type="checkbox"/> DEFENSE LOGISTICS AGENCY			
7. REPORT SUBMITTED AS <i>(Check one and provide appropriate number)</i>			8. AGENCY OR CONTRACTOR AWARDING CONTRACT		
<input type="checkbox"/> PRIME CONTRACTOR			a. AGENCY'S OR CONTRACTOR'S NAME		
PRIME CONTRACT NUMBER			b. STREET ADDRESS		
<input type="checkbox"/> SUBCONTRACTOR			SUBCONTRACT NUMBER		
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:			c. CITY		e. ZIP CODE
<input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS			d. STATE		

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB) (Dollar Amount and Percent of 10c.)</i>				
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
10c. TOTAL <i>(Sum of 10a and 10b.)</i>		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS <i>(Include HBCU/MI) (Dollar Amount and Percent of 10c.)</i>				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable) (Dollar Amount and Percent of 10c.)</i>				
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>				

15. REMARKS

16a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN		16b. TELEPHONE NUMBER	
		AREA CODE	NUMBER

 AUTHORIZED FOR LOCAL REPRODUCTION
 Previous edition is not usable

 STANDARD FORM 294 (REV. 12-98)
 Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

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

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 14: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract

modifications, enter the original goals in Block 15. The amounts entered in Blocks 10a through 14 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 through 14: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs and HUBZone SBs owned by women).

BLOCK 13 (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned and SDB HUBZone SBs).

BLOCK 15: Enter a short narrative explanation if (a) SB, SDB, WOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.

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

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

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

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is **NOT** necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

53.301-295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT <i>(See instructions on reverse)</i>			OMB No.: 9000-0007 Expires: 06/30/2000				
Public reporting burden for this collection of information is estimated to average 12.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.							
1. CORPORATION, COMPANY OR SUBDIVISION COVERED			3. DATE SUBMITTED				
a. COMPANY NAME			4. REPORTING PERIOD: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td><input type="checkbox"/> OCT 1 - MAR 31</td> <td><input type="checkbox"/> OCT 1 - SEPT 30</td> <td>YEAR</td> </tr> </table>		<input type="checkbox"/> OCT 1 - MAR 31	<input type="checkbox"/> OCT 1 - SEPT 30	YEAR
<input type="checkbox"/> OCT 1 - MAR 31	<input type="checkbox"/> OCT 1 - SEPT 30	YEAR					
b. STREET ADDRESS							
c. CITY	d. STATE	e. ZIP CODE					
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED				
6. ADMINISTERING ACTIVITY <i>(Please check applicable box)</i>							
<input type="checkbox"/> ARMY	<input type="checkbox"/> DEFENSE LOGISTICS AGENCY	<input type="checkbox"/> DOE					
<input type="checkbox"/> NAVY	<input type="checkbox"/> NASA	<input type="checkbox"/> OTHER FEDERAL AGENCY <i>(Specify)</i>					
<input type="checkbox"/> AIR FORCE	<input type="checkbox"/> GSA						
7. REPORT SUBMITTED AS <i>(Check one)</i>		8. TYPE OF PLAN					
<input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> BOTH		<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> COMMERCIAL					
<input type="checkbox"/> SUBCONTRACTOR		IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶					
9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES							
a		c					
b		d					
CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS <i>(Report cumulative figures for reporting period in Block 4)</i>							
TYPE		WHOLE DOLLARS	PERCENT (To nearest tenth of a %)				
10a. SMALL BUSINESS CONCERNS <i>(Include SDB, WOSB, HBCU/MI, HUBZone SB)</i> <i>(Dollar Amount and Percent of 10c.)</i>							
10b. LARGE BUSINESS CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>							
10c. TOTAL <i>(Sum of 10a and 10b.)</i>			100.0%				
11. SMALL DISADVANTAGED (SDB) CONCERNS <i>(Include HBCU/MI)</i> <i>(Dollar Amount and Percent of 10c.)</i>							
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>							
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) <i>(If applicable)</i> <i>(Dollar Amount and Percent of 10c.)</i>							
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS <i>(Dollar Amount and Percent of 10c.)</i>							
15. REMARKS							
16. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM							
a. NAME		b. TITLE		c. TELEPHONE NUMBER			
				AREA CODE NUMBER			
17. CHIEF EXECUTIVE OFFICER							
a. NAME			c. SIGNATURE				
b. TITLE			d. DATE				

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.
2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.
5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)
6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.
8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.
10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 14 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 14: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 14: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs and HUBZone SBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned and SDB HUBZone SBs).

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.
2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.
3. Enter in Blocks 10a through 14 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.
2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.
4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
5. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

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