

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 619—SMALL BUSINESS PROGRAMS

#### Subpart 619.2—Policies

Sec.

619.201 General policy.

#### Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

#### Subpart 619.5—Set-Asides for Small Business

619.501 General.

619.505 Rejecting Small Business Administration recommendations.

619.506 Withdrawing or modifying set asides.

#### Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

#### Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

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

619.705-1 General support of the program.

619.705-3 Preparing the solicitation.

619.705-4 Reviewing the subcontracting plan.

619.705-6 Postaward responsibilities of the contracting officer.

619.705-6-70 Reporting responsibilities.

619.708-70 Solicitation provisions and contract clauses.

#### Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

619.800 General.

619.801 Definitions.

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

619.803-71 Simplified procedures for 8(a) acquisitions under MOUs.

619.804 Evaluation, offering, and acceptance.

619.804-2 Agency offering.

619.804-3 SBA acceptance.

619.804-3-70 SBA acceptance under MOUs for acquisitions exceeding \$100,000.

619.805 Competitive 8(a).

619.805-2 Procedures.

619.806 Pricing the 8(a) contract.

619.808 Contract negotiation.

619.808-1 Sole source.

619.810 SBA appeals.

619.811 Preparing the contracts.

619.811-1 Sole source.

619.811-2 Competitive.

619.811-3 Contract clauses.

619.812 Contract administration.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26170, July 11, 1988, unless otherwise noted.

#### Subpart 619.2—Policies

##### 619.201 General policy.

(a) The Operations Director, Office of Small and Disadvantaged Business Utilization (A/SDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603-70), or designee, is responsible for establishing in coordination with the A/SDBU Operations Director annual goals for the DOS small and disadvantaged business program.

(c) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations,

procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of the simplified acquisition threshold, including commercial items using the simplified procedures of FAR subpart 13.5, to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides. This includes proposed contract modifications for new or additional requirements which do not fall within the original scope of the contract and which exceed the simplified acquisition threshold. This does not include the exercising of contract options;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small and small disadvantaged business matters as authorized by the A/SDBU Operations Director.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995; 64 FR 43624, Aug. 11, 1999]

**Department of State**

**619.705-4**

**Subpart 619.4—Cooperation with the Small Business Administration**

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

**619.402-70 DOS designee.**

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the A/SDBU Operations Director shall perform the action so required.

**Subpart 619.5—Set-Asides for Small Business**

**619.501 General.**

(c) Contracting officers shall use Department of State Form DS-1910, Small Business Review—Actions Above the Simplified Acquisition Threshold, to document set-aside decisions.

[59 FR 66759, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995; 64 FR 43624, Aug. 11, 1999]

**619.505 Rejecting Small Business Administration recommendations.**

The Procurement Executive is the agency head for the purposes of FAR 19.505.

**619.506 Withdrawing or modifying set asides.**

(b) The Procurement Executive shall resolve disagreements between the A/SDBU Operations Director and the contracting officer.

[59 FR 66759, Dec. 28, 1994]

**Subpart 619.6—Certificates of Competency and Determinations of Eligibility**

**619.602 Procedures.**

**619.602-1 Referral.**

The contracting officer shall transmit to the A/SDBU Operations Director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small busi-

ness concern is not responsible, as required by FAR 19.602-1(a).

**Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns**

**619.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

**619.705-1 General support of the program.**

It is the Department's policy to incorporate its current fiscal year goals as negotiated with the SBA into all pertinent Department solicitations, in addition to the standard subcontract clauses. Incorporation of the goals does not require that large business prime contractors must subcontract, but does require that to the extent they plan to subcontract, specific goals be established for doing business with small, small disadvantaged, and women-owned firms. Where funds are available, an incentive clause such as that found in FAR 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, is encouraged.

[59 FR 66760, Dec. 28, 1994]

**619.705-3 Preparing the solicitation.**

To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

[64 FR 43624, Aug. 11, 1999]

**619.705-4 Reviewing the subcontracting plan.**

A/SDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. A/SDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

**619.705-6 Postaward responsibilities of the contracting officer.****619.705-6-70 Reporting responsibilities.**

(a) The contracting officer shall forward to the A/SDBU Operations Director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected annually and semiannually, using Standard Form 295, Summary Subcontracting Report, for the annual submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semiannual submissions. The head of the contracting activity shall forward these reports to the A/SDBU Operations Director, not later than the 30th day of the month following the close of the reporting period.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66760, Dec. 28, 1994]

**619.708-70 Solicitation provisions and contract clauses.**

The contracting officer shall insert a provision substantially the same as the provision at 652.219-70, Department of State Subcontracting Goals, in solicitations whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, is used.

[59 FR 66760, Dec. 28, 1994]

**Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)**

SOURCE: 64 FR 43624, Aug. 11, 1999, unless otherwise noted.

**619.800 General.**

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to

the Senior Procurement Executives of various Federal contracting activities. The Department of State has signed an MOU with SBA, effective May 6, 1998. Under the MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

**619.801 Definitions.**

*National buy requirements* includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

**619.803 Selecting acquisitions for the 8(a) program.****619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).**

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

**619.803-71 Simplified procedures for 8(a) acquisitions under MOUs.**

Contracting activities may use the simplified acquisition procedures of FAR part 13 and DOSAR part 613 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) participants. The \$100,000 limitation for use of FAR part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the agency contracting officer shall establish the price with the selected 8(a) contractor.

## Department of State

619.808-1

(d) The contracting officer shall issue the purchase order or contract directly to the 8(a) firm in accordance with the provisions of FAR part 13 and DOSAR part 613. The contracting officer shall insert FAR clause 52.219-14, Limitations on Subcontracting, and DOSAR clause 652.219-71, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection. The contracting officer's title shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose, shall sign the purchase order or contract as a third party.

(e) The contracting officer shall forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

### **619.804 Evaluation, offering, and acceptance.**

#### **619.804-2 Agency offering.**

(a) When applicable, this notification shall identify that the offering is in accordance with the MOU identified in 619.800.

#### **619.804-3 SBA acceptance.**

#### **619.804-3-70 SBA acceptance under MOUs for acquisitions exceeding \$100,000.**

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting agency.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the contracting agency may assume that the requirement has been accepted and proceed with the acquisition.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

### **619.805 Competitive 8(a).**

#### **619.805-2 Procedures.**

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see FAR part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding \$100,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

### **619.806 Pricing the 8(a) contract.**

(a) When required by FAR subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 619.800.

### **619.808 Contract negotiation.**

#### **619.808-1 Sole source.**

(a) If the acquisition is conducted under an MOU cited in 619.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 619.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a)

## 619.810

participant, the SBA may participate in the negotiations.

### 619.810 SBA appeals.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

### 619.811 Preparing the contracts.

#### 619.811-1 Sole source.

(d) If the award is to be made under an MOU cited in 619.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall insert FAR 52.219-14, Limitations on Subcontracting, and DOSAR 652.219-71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding \$100,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, i.e., an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate form.

#### 619.811-2 Competitive.

(a) If the award is made under the delegation of 8(a) contracting authority, competitive contracts for 8(a) firms shall be prepared in accordance

## 48 CFR Ch. 6 (10-1-02 Edition)

with the same standards as 8(a) sole source contracts. See 619.811-1.

(b) If the acquisition is conducted under the MOU cited in 619.800, the process for obtaining signatures shall be as specified in 619.811-1(d)(4).

### 619.811-3 Contract clauses.

(d)(3) The contracting officer shall insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), in competitive solicitations and contracts exceeding \$100,000 when the acquisition is processed under the MOU cited in 619.800.

(f) The contracting officer shall insert the clause at FAR 52.219-14, Limitations on Subcontracting, and DOSAR 652.219-71, Section 8(a) Direct Awards, in all solicitations and contracts that are processed under the MOU cited at 619.800. The clauses at FAR 52.219-11, Special 8(a) Contract Conditions; 52.219-12, Special 8(a) Subcontract Conditions; and, 52.219-17, Section 8(a) Award, shall not be used.

### 619.812 Contract administration.

(d) The head of the contracting activity is the agency head for the purposes of FAR 19.812(d). Awards under the MOU cited in 619.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at DOSAR 652.219-71, Section 8(a) Direct Awards, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

## PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 622.3—Contract Work Hours and Safety Standards Act

Sec.

622.302 Liquidated damages and overtime pay.

### Subpart 622.4—Labor Standards for Contracts Involving Construction

622.404 Davis-Bacon Act wage determinations.

622.404-3 Procedures for requesting wage determinations.