

19.202-5

must comply when doing business with other than the Government.

[48 FR 42240, Sept. 19, 1983, as amended at 63 FR 70268, Dec. 18, 1998; 65 FR 60544, Oct. 11, 2000; 68 FR 43856, July 24, 2003]

19.202-5 Data collection and reporting requirements.

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

(a) Require each prospective contractor to represent whether it is a small business, veteran-owned small business, service-disabled veteran-owned 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, veteran-owned small business, service-disabled veteran-owned 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).

(c) When the contract includes the clause at 52.219-28, Post Award Small Business Program Rerepresentation, and the conditions in the clause for rerepresenting are met—

(1) Require a contractor that represented itself as a small business concern prior to award of the contract to rerepresent its size status; and

(2) Permit a contractor that represented itself as other than a small business concern prior to award to rerepresent its size status.

[48 FR 42240, Sept. 19, 1983, as amended at 60 FR 48261, Sept. 18, 1995; 63 FR 70268, Dec. 18, 1998; 65 FR 60544, Oct. 11, 2000; 72 FR 36854, July 5, 2007; 74 FR 11825, Mar. 19, 2009]

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—

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(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);

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

(5) Service-disabled veteran-owned small business set-asides (see Subpart 19.14).

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

[52 FR 38189, Oct. 14, 1987, as amended at 53 FR 43390, Oct. 26, 1988; 54 FR 46005, Oct. 31, 1989; 62 FR 51270, Sept. 30, 1997; 63 FR 35722, June 30, 1998; 63 FR 70268, Dec. 18, 1998; 69 FR 25276, May 5, 2004]

Subpart 19.3—Determination of Small Business Status for Small Business Programs

19.301 Representations and rerepresentations.

19.301-1 Representation by the offeror.

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

(b) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the concern's small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning

a specific representation shall be referred to the SBA in accordance with 19.302.

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

(d) If the SBA determines that the status of a concern as a small business, veteran-owned small business, service-disabled veteran-owned 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 Sections 16(a) or 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 121.108 for small business, 13 CFR 124.501 for 8(a) small business, 13 CFR 124.1011 for small disadvantaged business, 13 CFR 125.29 for veteran or service-disabled veteran-owned small business, and 13 CFR 126.900 for HUBZone small business.

[48 FR 42240, Sept. 19, 1983, as amended at 55 FR 3882, Feb. 5, 1990; 60 FR 48261, Sept. 18, 1995; 62 FR 236, Jan. 2, 1997; 63 FR 70268, Dec. 18, 1998; 65 FR 60545, Oct. 11, 2000; 69 FR 25276, May 5, 2004. Redesignated at 72 FR 36855, July 5, 2007]

19.301-2 Rerepresentation by a contractor that represented itself as a small business concern.

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

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

(b) A contractor that represented itself as a small business concern before contract award must rerepresent its size status for the North American Industry Classification System (NAICS) code in the contract upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) A contractor must rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract.

(d) After a contractor rerepresents it is other than small in accordance with 52.219-28, the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements. Agencies should issue a modification to the contract