

19.1202-3

subpart 19.14), economically disadvantaged women-owned small business set-asides, and set-asides for women-owned small business concerns eligible under the Women-Owned Small Business Program (see subpart 19.15).

(2) 8(a) acquisitions (see Subpart 19.8);

(3) Negotiated acquisitions where the lowest price technically acceptable source selection process is used (see 15.101-2); or

(4) Contract actions that will be performed entirely outside of the United States and its outlying areas.

[63 FR 36123, July 1, 1998, as amended at 63 FR 70272, Dec. 18, 1998; 65 FR 46057, July 26, 2000; 68 FR 28082, May 22, 2003; 69 FR 25278, May 5, 2004; 71 FR 57367, Sept. 28, 2006; 75 FR 53133, Aug. 30, 2010; 76 FR 18311, Apr. 1, 2011]

19.1202-3 Considerations in developing an evaluation factor or subfactor.

In developing an SDB participation evaluation factor or subfactor for the solicitation, agencies may consider—

(a) The extent to which SDB concerns are specifically identified;

(b) The extent of commitment to use SDB concerns (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(c) The complexity and variety of the work SDB concerns are to perform;

(d) The realism of the proposal;

(e) Past performance of offerors in complying with subcontracting plan goals for SDB concerns and monetary targets for SDB participation; and

(f) The extent of participation of SDB concerns in terms of the value of the total acquisition.

[63 FR 36123, July 1, 1998, as amended at 64 FR 36224, July 2, 1999]

19.1202-4 Procedures.

(a) The solicitation shall describe the SDB participation evaluation factor or subfactor. The solicitation shall require offerors to provide, with their offers, targets, expressed as dollars and percentages of total contract value, in each of the applicable, authorized NAICS Industry Subsector, and a total target for SDB participation by the contractor, including joint venture partners, and team members, and a total target for SDB participation by

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subcontractors. The solicitation shall require an SDB offeror that waives the SDB price evaluation adjustment in the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, to provide with its offer a target for the work that it intends to perform as the prime contractor. The solicitation shall state that any targets will be incorporated into and become part of any resulting contract. Contractors with SDB participation targets shall be required to report SDB participation.

(b) When an evaluation includes an SDB participation evaluation factor or subfactor that considers the extent to which SDB concerns are specifically identified, the SDB concerns considered in the evaluation shall be listed in the contract, and the contractor shall be required to notify the contracting officer of any substitutions of firms that are not SDB concerns.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

19.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer may encourage increased subcontracting opportunities in the NAICS Industry Subsector as determined by the Department of Commerce for SDB concerns in negotiated acquisitions by providing monetary incentives (see the clause at 52.219-26, Small Disadvantaged Business Participation Program Incentive Subcontracting, and 19.1204(c)). Monetary incentives shall be based on actual achievement as compared to proposed monetary targets for SDB subcontracting. The incentive subcontracting program is separate and distinct from the establishment, monitoring, and enforcement of SDB subcontracting goals in a subcontracting plan.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

19.1204 Solicitation provisions and contract clauses.

(a) The contracting officer may insert a provision substantially the same as the provision at 52.219-24, Small Disadvantaged Business Participation Program Targets, in solicitations that consider the extent of participation of

SDB concerns in performance of the contract. The contracting officer may vary the terms of this provision consistent with the policies in 19.1202-4.

(b) The contracting officer shall insert the clause at 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, in solicitations and contracts that consider the extent of participation of SDB concerns in performance of the contract.

(c) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts containing the clause at 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, a clause substantially the same as the clause at 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, when authorized (see 19.1203). The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting officer shall not use the clause at 52.219-26.

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

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

SOURCE: 63 FR 70272, Dec. 18, 1998, unless otherwise noted.

19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone 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.

[48 FR 42240, Sept. 19, 1983, as amended at 75 FR 77730, Dec. 13, 2010]

19.1302 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

[67 FR 13066, Mar. 20, 2002]

19.1303 Status as a HUBZone small business concern.

(a) Status as a 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 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 at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm.

Only firms on the list are HUBZone small business concerns, eligible for HUBZone preferences. HUBZone preferences apply without regard to the place of performance. Information on HUBZone small business concerns can also be obtained at <http://www.sba.gov/hubzone> or by writing to the Director for the HUBZone Program (Director/HUB) at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at hubzone@sba.gov.

(c) A joint venture may be considered a HUBZone small business concern if it meets the criteria in the explanation of affiliates (see 19.101).

(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award.

(e) A HUBZone small business concern may submit an offer for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at 13 CFR 121.406(b)(1) and if the small business manufacturer providing the end item is also a HUBZone small business concern.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(2) For HUBZone contracts at or below \$25,000 in total value, a HUBZone small business concern may supply the end item of any manufacturer, including a large business, so long as the