

Federal Acquisition Regulation

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business set-aside of a single acquisition or a class of acquisitions may be total or partial.

(b) The determination to make a small business set-aside may be unilateral or joint. A unilateral determination is one that is made by the contracting officer. A joint determination is one that is recommended by the Small Business Administration (SBA) procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) and concurred in by the contracting officer.

(c) 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 perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless an award is anticipated to a small business under the 8(a), HUBZone, SDVOSB, or WOSB Programs. 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.

(d) At the request of an SBA procurement center representative, (or, if a procurement center representative is not assigned, see 19.402(a)) the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.

(f) All solicitations involving set-asides must specify the applicable small business size standard and NAICS code (see 19.303).

(g) 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.

[48 FR 42240, Sept. 19, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting section 19.501, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

19.502 Setting aside acquisitions.

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 \$3,000 or less (\$15,000 or less for acquisitions as described in 13.201(g)(1)), or purchases from required sources of supply under Part 8 (*e.g.*, Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

[63 FR 70270, Dec. 18, 1998, as amended at 67 FR 56121, Aug. 30, 2002; 68 FR 4050, Jan. 27, 2003; 69 FR 8314, Feb. 23, 2004; 69 FR 16150, Mar. 26, 2004; 71 FR 57367, Sept. 28, 2006]

19.502-2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(b). If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if

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still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract as described in 19.203.

(b) Before setting aside an acquisition under this paragraph, refer to 19.203(c). The contracting officer shall set aside any acquisition over \$150,000 for small business participation when there is a reasonable expectation that:

(1) Offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (see paragraph (c) of this section); and

(2) Award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (see 19.502-3 as to partial set-asides). Although past acquisition history of an item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For small business set-asides other than for construction or services, any concern proposing to furnish a product that it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has granted either a waiver or exception to the nonmanufacturer rule (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see 19.102(f) (4) and (5)). In addition, SBA has excepted procurements processed under simplified acquisition procedures (see part 13), where the anticipated cost of the procurement will not exceed \$25,000, from the nonmanufacturer rule. Waivers permit small businesses to provide any firm's product. The exception permits small businesses to provide any domestic firm's product. In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved

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for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.

[60 FR 34757, July 3, 1995, as amended at 61 FR 39209, July 26, 1996; 63 FR 70270, Dec. 18, 1998; 64 FR 10536, Mar. 4, 1999; 65 FR 16275, Mar. 27, 2000; 67 FR 56121, Aug. 30, 2002; 67 FR 70522, Nov. 22, 2002; 68 FR 4050, Jan. 27, 2003; 69 FR 8314, Feb. 23, 2004; 70 FR 11742, Mar. 9, 2005; 71 FR 221, Jan. 3, 2006; 71 FR 57367, Sept. 28, 2006; 75 FR 53133, Aug. 30, 2010; 75 FR 82567, Dec. 30, 2010; 76 FR 14568, Mar. 16, 2011; 76 FR 26221, May 6, 2011]

19.502-3 Partial set-asides.

(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—

(1) A total set-aside is not appropriate (see 19.502-2);

(2) The requirement is severable into two or more economic production runs or reasonable lots;

(3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price;

(4) The acquisition is not subject to simplified acquisition procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.