

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 319—SMALL BUSINESS PROGRAMS

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 319.2—Policies

319.201 General policy.

(d) The functional management responsibilities for HHS' small business program (*i.e.*, small businesses; veteran-owned small businesses; service-disabled, veteran-owned small businesses; HUBZone small businesses; small disadvantaged businesses; and women-owned small businesses) are delegated to the OSDBU Director. *See* the HHS Small Business Program manual for information on the HHS small business program, including SBS and Small Business Administration (SBA) Procurement Center Representative (PCR) acquisition review timeframes.

(e)(1) One or more qualified SBSs will implement the HHS small business program and shall be co-located within the following OPDIVs: AHRQ; ASPR/OAMCG; CDC; CMS; FDA; HRSA; IHS; NIH; PSC; and SAMHSA. The OSDBU Director shall exercise full management authority over SBSs.

(2) Within IHS, the primary SBS will be responsible for IHS' overall implementation of the HHS small business program; however, each IHS contracting office will have a small business technical advisor (SBTA) to carry out those functions and responsibilities to implement the small business program. The primary IHS SBS shall assist and provide guidance to respective SBTAs.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

319.202-2 Locating small business sources.

(a) OPDIVs shall foster, to the extent practicable, maximum participation by small businesses in HHS acquisitions. Prior to issuing a solicitation, the Contracting Officer shall make every reasonable effort to find small business concerns that can compete for the proposed requirement—*see FAR 19.202, 10.001(2)(v), and 10.002(b)(1)(vii)*.

(1) If it cannot be determined in advance (through market research under *FAR Part 10*, discussions between the Contracting Officer and the SBS, or other means—*see FAR 15.201*, whether a solicitation in excess of the simplified acquisition threshold can be set aside exclusively for small business participation [whether for small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; or 8(a) small business(es)], the Contracting Officer may publish a notice entitled "Small Business Sources Sought" in FedBizOpps. The purpose of a Small Business Sources Sought notice is to identify the availability and capability of qualified small business sources; and their size classification relative to the appropriate North American Industry Classification System (NAICS) code. This will assist the Government in determining the appropriate acquisition method, including whether a set-aside is possible. However, to solicit technical, scientific, or business information for project planning purposes, an RFI may be used—*see 315.201(e)*.

Health and Human Services

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(2) When using a Small Business Sought notice, an OPDIV shall not request that potential sources provide more than the minimum information necessary—see *FAR 10.001(b)*, to determine whether they have the apparent capability to perform a requirement and, therefore, whether they should be included in any future competition. The notice and the information received shall not be used to determine how well respondents can perform a requirement, which can only be evaluated in response to a solicitation. Accordingly, the notice shall not be used to—

(i) Obtain capability statements that are evaluated and determined acceptable or unacceptable;

(ii) Require cost/price proposals or detailed technical solutions;

(iii) Identify a prospective sole source; or

(iv) Exclude small business concerns.

(3) OPDIVs shall follow the standard HHS instructions for completing a “Small Business Sources Sought” notice.” The template for the notice is available on the ASFR/OGAPA/DA Internet Web site. The Contracting Officer shall post the notice in FedBizOpps by selecting and completing a Sources Sought notice, accessible on the FedBizOpps “Notices” page at: <http://www.fedbizopps.gov>. Additional information may be included in the notice in accordance with OPDIV procedures. The Contracting Officer shall document, in the form of a memorandum to the file, the results of the review by technical personnel of information submitted in response to the notice, including whether each respondent appears to be capable of performing the requirement. The Contracting Officer shall attach a copy of the analysis provided by the technical personnel to the memorandum.

319.270-1 Solicitation provision and contract clause.

(a) The Contracting Officer shall insert the provision in *352.219-70*, Mentor-Protégé Program, in solicitations that include the clause in *FAR 52.219-9*, Small Business Subcontracting Plan. The provision requires that offerors provide the Contracting Officer a copy of their HHS Office of Small and Dis-

advantaged Business Utilization (OSDBU)-approved mentor-protégé agreement in response to a solicitation. (b) The Contracting Officer shall insert the clause in *352.219-71*, Mentor-Protégé Program Reporting Requirements, in contracts that include the clause in *FAR 52.219-9*, Small Business Subcontracting Plan, and which are awarded to a contractor with an HHS OSDBU-approved mentor-protégé agreement.

Subpart 319.5—Set-Asides for Small Business

319.501 General.

(e) Subsequent to the Contracting Officer’s recommendation on *Form HHS 653*, HHS Small Business Review Form, the SBS shall review each proposed acquisition strategy and either concur or not concur with the Contracting Officer’s recommendation. The PCR shall also review the acquisition strategy and either concur or not concur with the Contracting Officer’s recommendation. If the Contracting Officer disapproves the SBS’s or the PCR’s set-aside recommendation, the Contracting Officer shall document the reasons on *Form HHS 653* and place the form in the contract file. The Contracting Officer shall make the final determination as to whether the proposed acquisition will be set-aside or not.

319.506 Withdrawing or modifying set-asides.

(d) Immediately upon notice from the Contracting Officer, the SBS shall provide notification of all set-aside withdrawals to the OSDBU Director by both telephone and e-mail.

Subpart 319.7—Subcontracting With Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

319.705 Responsibilities of the Contracting Officer under the subcontracting assistance program.

319.705-5 Awards involving subcontracting plans.

(a)(3) The Contracting Officer shall provide the PCR a period of 1 to 5 working days to review the contract award package, depending upon the circumstances and complexity of the individual acquisition.

PART 322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**Subpart 322.8—Equal Employment Opportunity**

Sec.

322.810 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 322.8—Equal Employment Opportunity**322.810 Solicitation provisions and contract clauses.**

(h) The Contracting Officer shall insert the clause in 352.222-70, Contractor Cooperation in Equal Employment Opportunity Investigations, in solicitations, contracts, and orders that include the clause in FAR 52.222-26, Equal Opportunity.

PART 323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**Subpart 323.70—Safety and Health**

Sec.

323.7000 Scope of subpart.

323.7001 Policy.

323.7002 Actions required.

Subpart 323.71—Green Purchasing Requirements

323.7100 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 323.70—Safety and Health**323.7000 Scope of subpart.**

This subpart prescribes the use of a safety and health clause in contracts involving hazardous materials or operations, and provides procedures for administering safety and health provisions.

323.7001 Policy.

Various statutes and regulations (e.g., the Walsh-Healy Act and *Service Contract Act*), require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. *FAR subpart 23.3* serves as the primary reference regarding hazardous materials. The Contracting Officer shall follow the guidance in this subpart when the guidance in the FAR is not sufficient or does not meet the safety and health situation for an acquisition.

323.7002 Actions required.

(a) *Contracting activities.* The Contracting Officer shall insert the clause in 352.223-70, Safety and Health, or a clause substantially the same, in solicitations and contracts that involve hazardous materials or operations for the following types of requirements:

(1) Services or products.

(2) Research, development, or test projects.

(3) Transportation of hazardous materials.

(4) Construction, including construction of facilities on the contractor's premises.

(b) *Safety officers.* OPDIV safety officers shall advise and assist initiators of acquisition requests and Contracting Officers in—

(1) Determining whether safety and health provisions shall be part of a prospective contract;

(2) Evaluating a prospective contractor's safety and health programs; and

(3) Conducting post-award reviews and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall—