

OFFICE OF MANAGEMENT AND BUDGET**Office of Federal Procurement Policy****Small Disadvantaged Business Procurement: Reform of Affirmative Action in Federal Procurement**

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: Notice of Determination Concerning the Small Disadvantaged Business (SDB) Participation Program.

SUMMARY: The Federal Acquisition Regulation (FAR), 48 CFR Subpart 19.12, contains regulations providing for an SDB Participation Program to be used when evaluating the extent of participation of SDB concerns in performance of contracts in authorized standard industrial classification code (SIC) major groups. The FAR provides further that the Department of Commerce (DOC) will determine the authorized SIC major groups for use in the SDB Participation Program. The DOC, in the attached memorandum, determines that the SIC major groups eligible for the price evaluation adjustment program shall be applicable for the SDB Participation Program. OFPP published on June 30, 1998, the listing of the eligible SIC major groups [63 FR 35714 (1998)] for the price evaluation adjustment program.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, Telephone 202-395-3302. For information on the Commerce determination, contact Jeffrey Mayer, Director of Policy Development, Economics and Statistics Administration, U.S. Department of Commerce, Telephone 202-482-1728.

SUPPLEMENTARY INFORMATION:**Procurement Mechanisms and Factors**

FAR Subpart 19.12 provides for an SDB Participation Program that consists

of two mechanisms: (1) An evaluation factor or subfactor when evaluating the extent of participation of SDBs in performance of contracts in authorized SIC major groups, and (2) an incentive subcontracting program for SDB concerns in authorized SIC major groups. OFPP gives notice that the attached Memorandum from the DOC determines that the SIC major groups eligible for the price evaluation adjustment program shall be applicable for the SDB Participation Program. (See 63 FR 35714 (June 30, 1998)) for the listing of the eligible SIC major groups.) The SDB Participation Program is authorized for use in solicitations issued on or after January 1, 1999.

Deidre A. Lee,
Administrator.

December 15, 1998.

MEMORANDUM FOR OFFICE OF FEDERAL PROCUREMENT POLICY

From: Jeffrey L. Mayer, Director of Policy Development.

Subject: Department of Commerce Determination on the Small Disadvantaged Business Participation Program.

Pursuant to new Federal Acquisition Regulation (FAR) subpart 19.12, transmitted herein is a Department of Commerce (DOC) determination on the Small Disadvantaged Business Participation Program for use in Federal procurements.

DOC transmitted a Notice of Determination Concerning Price Evaluation Adjustments to the Office of Federal Procurement Policy (OFPP), which was published in the **Federal Register** on June 30, 1998 (see 63 Fed. Reg. 35714 (1998)). The Notice identified the standard industrial classification (SIC) major industry groups in which offers by small disadvantaged businesses (SDBs) on certain federal prime contracts would be eligible for price evaluation adjustments.

In addition, FAR 19.1202-1 and 19.1203 required DOC to identify the SIC major industry groups in which the extent of participation of SDB concerns as subcontractors in performance of federal prime contracts would: (a) make certain offerors on these prime contracts eligible for an evaluation factor or subfactor; and (b) make successful offerors eligible for an incentive subcontracting program.

DOC was asked to identify eligible major industry groups at the subcontract level for use in the Small Disadvantaged Business Participation Program that becomes effective January 1, 1999. To make its determination, DOC considered prime contracting data and published information on SDB participation in subcontracting.

DOC's analysis of prime contracting revealed that in 59 out of 98 major industry groups (and regions, in the case of the construction sector), SDBs win a smaller than expected (given their age and size) share of federal prime contract dollars. Evidence cited in U.S. Department of Justice, "The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey" [see 61 Fed. Reg. 26050 (1996)] provides no indication that SDB subcontractors deal with substantially different financial institutions, private sector customers, and suppliers than do SDB prime contractors in the same industry, i.e., there is no basis for believing that SDB subcontractors face lower barriers to effective competition than those encountered by SDB prime contractors in the same industry. In addition, subcontracting tends to be dominated by informal networks of personal contacts, in which information is exchanged about prospective projects, low-cost suppliers, and credit opportunities. In those industries in which minority entrepreneurs have been excluded from these networks, their ability to participate in federal contracting as subcontractors has likely been diminished compared with their ability to participate as prime contractors. Therefore, SDBs are unlikely to win larger-than-expected shares of federal subcontract awards in the same major industry groups in which SDBs win smaller-than-expected shares of federal prime contract awards.

Based on the reasons explained above which indicate that, in any given major industry group, discrimination affects federal prime contractors and subcontractors similarly, and on the basis of currently available data, DOC determines that the SIC major industry groups eligible for the price evaluation adjustment program (i.e., the prime contractor program) shall be applicable to the small disadvantaged business participation program (i.e., the subcontractors program). (See 63 Fed. Reg. 35714 (1998) for a listing of the eligible SIC major industry groups.)

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