

(f) A request to suspend action on an acquisition need not be honored if the contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.

[60 FR 48261, Sept. 18, 1995, as amended at 67 FR 13054, Mar. 20, 2002]

**19.506 Withdrawing or modifying small business set-asides.**

(a) If, before award of a contract involving a small business set-aside, the contracting officer considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the small business set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual small business set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class small business set-aside to withdraw one or more individual acquisitions.

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small business specialist and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of small business set-asides (see 19.507) or dissolution of small business set-asides under \$100,000.

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a small business set-aside and include it in the contract file.

[60 FR 48262, Sept. 18, 1995, as amended at 63 FR 70270, Dec. 18, 1998]

**19.507 Automatic dissolution of a small business set-aside.**

(a) If a small business set-aside acquisition or portion of an acquisition is not awarded, the unilateral or joint determination to set the acquisition aside is automatically dissolved for the unawarded portion of the set-aside. The required supplies and/or services for which no award was made may be acquired by sealed bidding or negotiation, as appropriate.

(b) Before issuing a solicitation for the items called for in a small business set-aside that was dissolved, the contracting officer shall ensure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small business concerns.

[48 FR 42240, Sept. 19, 1983, as amended at 50 FR 1743, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 63 FR 70270, Dec. 18, 1998]

**19.508 Solicitation provisions and contract clauses.**

(a)-(b) [Reserved]

(c) The contracting officer shall insert the clause at 52.219-6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides. The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f) (4) and (5)).

(d) The contracting officer shall insert the clause at 52.219-7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides. The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f) (4) and (5)).

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small

## Federal Acquisition Regulation

## 19.602-1

business and the contract amount is expected to exceed \$100,000.

[48 FR 42240, June 9, 1987, as amended at 52 FR 21902, June 9, 1987; 52 FR 38189, Oct. 14, 1987; 53 FR 27464, July 20, 1988; 53 FR 43390, Oct. 26, 1988; 54 FR 25063, June 12, 1989; 55 FR 25529, June 21, 1990; 55 FR 38516, Sept. 18, 1990; 60 FR 34757, July 3, 1995; 60 FR 48262, Sept. 18, 1995; 61 FR 39209, July 26, 1996; 61 FR 67430, Dec. 20, 1996; 62 FR 236, Jan. 2, 1997; 62 FR 44820, Aug. 22, 1997]

### Subpart 19.6—Certificates of Competency and Determinations of Responsibility

#### 19.601 General.

(a) A Certificate of Competency (COC) is the certificate issued by the Small Business Administration (SBA) stating that the holder is responsible (with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting) for the purpose of receiving and performing a specific Government contract.

(b) The COC program empowers the Small Business Administration (SBA) to certify to Government contracting officers as to all elements of responsibility of any small business concern to receive and perform a specific Government contract. The COC program does not extend to questions concerning regulatory requirements imposed and enforced by other Federal agencies.

(c) The COC program is applicable to all Government acquisitions. A contracting officer shall, upon determining an apparent successful small business offeror to be nonresponsible, refer that small business to the SBA for a possible COC, even if the next acceptable offer is also from a small business.

(d) When a solicitation requires a small business to adhere to the limitations on subcontracting, a contracting officer's finding that a small business cannot comply with the limitation shall be treated as an element of responsibility and shall be subject to the COC process. When a solicitation requires a small business to adhere to the definition of a nonmanufacturer, a contracting officer's determination that

the small business does not comply shall be processed in accordance with subpart 19.3.

(e) Contracting officers, including those located overseas, are required to comply with this subpart for U.S. small business concerns.

[48 FR 42240, Sept. 19, 1983, as amended at 51 FR 2664, Jan. 17, 1986; 54 FR 34754, Aug. 21, 1989; 59 FR 67036, Dec. 28, 1994; 61 FR 67410, Dec. 20, 1996; 62 FR 44820, Aug. 22, 1997]

#### 19.602 Procedures.

##### 19.602-1 Referral.

(a) Upon determining and documenting that an apparent successful small business offeror lacks certain elements of responsibility (including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting), the contracting officer shall—

(1) Withhold contract award (see 19.602-3); and

(2) Refer the matter to the cognizant SBA Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located, in accordance with agency procedures, except that referral is not necessary if the small business concern—

(i) Is determined to be unqualified and ineligible because it does not meet the standard in 9.104-1(g); *provided*, that the determination is approved by the chief of the contracting office; or

(ii) Is suspended or debarred under Executive Order 11246 or subpart 9.4.

(b) If a partial set-aside is involved, the contracting officer shall refer to the SBA the entire quantity to which the concern may be entitled, if responsible.

(c) The referral shall include—

(1) A notice that a small business concern has been determined to be nonresponsible, specifying the elements of responsibility the contracting officer found lacking; and

(2) If applicable, a copy of the following:

(i) Solicitation.

(ii) Final offer submitted by the concern whose responsibility is at issue for the procurement.