



**Department of Energy
Acquisition Regulation**

**No. 2004-03
Date 05/05/04**

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: Small Business Programs

References:

FAR 7.107	Additional requirements for acquisitions involving bundling
FAR 19.201	General policy
FAR 19.202-1	Encouraging small business participation in acquisitions
FAR 19.302	Protesting a small business representation
FAR 19.306	Protesting a firm's status as a HUBZone small business concern
FAR 19.307	Solicitation provisions
FAR Subpart 19.5	Set-Asides for Small Business
FAR Subpart 19.7	The Small Business Subcontracting Program
FAR Subpart 19.8	Contracting with the Small Business Administration (The 8(a) Program)
FAR Subpart 19.9	Very Small Business Pilot Program
FAR Subpart 19.10	Small Business Competitiveness Demonstration Program
FAR Subpart 19.11	Price Evaluation Adjustment for Small Disadvantaged Business Concerns
FAR Subpart 19.12	Small Disadvantaged Business Participation Program
FAR Subpart 19.13	Historically Underutilized Business Zone (HUBZone) Program
FAR Subpart 26.1	Indian Incentive Program
FAR 52.219-10	Incentive Subcontracting Program
FAR 52.219-22	Small Disadvantaged Business Status
FAR 52.219-23	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
FAR 52.219-24	Small Disadvantaged Business Participation Program-Targets
FAR 52.219-25	Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting
FAR 52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises
DEAR Subpart 919.5	Set-Asides for Small Business
DEAR Subpart 919.7	Subcontracting with Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns
DEAR Subpart 919.8	Contracting with the Small Business Administration (The 8(a) Program)
DEAR Subpart 919.70	The Department of Energy Mentor-Protégé Program
DEAR 970.1504-4-1	Make-or-buy plans
DEAR 970.5215-2	Make-or-buy plan
DOE Acquisition Guide Chapter 38	Task Order Contracting
13 CFR Chapter 1	Small Business Administration
OFPP Letter 99-1	Small Business Procurement Goals

Effective date of the Acquisition Letter (AL)

This AL is effective 10 business days from the date of issuance.

AL Expiration

This AL remains in effect until superseded or canceled. This AL supersedes AL-2000-02 (Small Business Programs, dated April 20, 2000) and AL-2001-05 (Maximizing Opportunities for Small Businesses, dated October 12, 2001), which are rescinded in their entirety.

Points of Contact

Contact Stephen Zvolensky of the Department of Energy (DOE) Office of Procurement and Assistance Policy at (202) 586-5936, or at stephen.zvolensky@hq.doe.gov, or Gary Lyttek, National Nuclear Security Administration (NNSA) Office of Acquisition and Supply Management at (202) 586-8304, or at gary.lyttek@nnsa.doe.gov.

Visit the website at <http://professionals.pr.doe.gov> for information on Acquisition Letters and other policy issues.

Purpose of the AL

The purpose of this AL is to make available guidance on contracting with small business concerns.

This AL is divided into three parts: Part I applies to the award of prime contracts; Part II applies to the award of subcontracts; and Part III includes other considerations.

Background on Small Business

The Small Business Act contains a government-wide goal for participation by small business concerns of not less than 23 percent of the total value of all prime contract awards for each fiscal year as well as individual goals for women-owned small business concerns (5%), small disadvantaged business concerns (5%), service-disabled veteran-owned small business concerns (3%) and HUBZone small business concerns (3%). The Act further provides that agencies negotiate annual goals with the Small Business Administration (SBA).

In September of 2002, Secretary Spencer Abraham issued his "Policy Statement Supporting Small Businesses in Implementing DOE Missions." In that statement, the Secretary directed all departmental elements to examine and seek to expand their grant and contract opportunities with small businesses and tasked the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) to prepare a comprehensive small business strategy to ensure that small businesses are provided the maximum practicable opportunity to participate in departmental programs at the prime contract level. Additionally, the policy directed that the plan include a strategy to increase the level and expand the types of subcontracts awarded to small business by the Department's facilities management contractors.

In May of 2003, the OSDBU issued a Small Business Strategic Plan that provides steps the department will take to increase its small business awards. The Plan is posted on the OSDBU website: http://smallbusiness.doe.gov/OSDBU_Strategic_Plan.pdf

An "Advanced Planning Acquisition Team" (APAT) has been established to review acquisition requests over \$3 million for their ability to be set aside for small business. The team consists of representatives of the program office requesting the acquisition, the Office of Procurement and Assistance Management, the OSDBU and the SBA Procurement Center Representative (PCR). [Note the APAT requirement does not apply to NNSA.]

Definitions

"8(a) contractor" means a concern, certified by the SBA, to be eligible to participate in the SBA 8(a) program, established by section 8 (a) of the Small Business Act, 15 U.S.C. section 637(a), which authorizes the SBA to enter into all types of contracts with other agencies and award subcontracts for performing these contracts with eligible 8(a) contractors.

"HUBZone" means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

"Small disadvantaged business concern" (except for 52.212-3(c)(2) and 52.219-1(b)(2) for general statistical purposes and 52.212-3(c)(7)(ii), 52.219-22(b)(2), and 52.219-23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and (i) No material change in disadvantaged ownership and control has occurred since its certification; (ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and (iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the data base maintained by the Small Business Administration (PRO-Net); or (2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier

to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award.

"Service-disabled veteran-owned small business concern" means a small business concern- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran. Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Veteran-owned small business concern" means a small business concern- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) Whose management and daily business operations are controlled by one or more women.

Part I. Prime Contracting

- A. SMALL BUSINESS CONTRACTING PROCESSES
- B. SMALL BUSINESS PROCUREMENT TOOLS
- C. SMALL BUSINESS MARKET RESEARCH
- D. SMALL BUSINESS ACQUISITION PLANNING

Part II. Subcontracting with Small Business

- A. SUBCONTRACTING PLANS
- B. SUBCONTRACTING PROCEDURES

Part III. Other Considerations

- A. SECURITY CLEARANCES
- B. SMALL BUSINESS STATISTICS
- C. CENTRAL CONTRACTOR REGISTRATION DATABASE
- D. SECRETARY'S SMALL BUSINESS AWARDS

Part I. Prime Contracting

A. SMALL BUSINESS CONTRACTING PROCESSES

Total small business set-asides. Except for those acquisitions set aside for very small business concerns (see Subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)(1)), but not over \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the Contracting Officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. This obligation also applies to purchase card transactions. The Contracting Officer shall set aside any acquisition over \$100,000 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 (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices.

Awards to 8(a) Firms. For procurements with an anticipated total value, including options, in excess of \$5,000,000 for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$3,000,000 for all other acquisitions, if an 8(a) certified firm can be identified with the expectation that the award would be at a fair market price, an award may be made noncompetitively to an 8(a) firm. If the procurement is valued in excess of \$3 million (\$5 million for manufacturing) and two or more capable 8(a) firms can be identified, the procurement shall be set aside for competition among 8(a) firms (see FAR 19.805-1(a)(2)). Contracting activities may make awards under the 8(a) program with DOE/NNSA Contracting Officers signing on behalf of SBA. This delegated signature authority saves time and effort in completing the award between DOE and SBA and the subcontract between SBA and the selected 8(a) firm.

Set-Asides for Very Small Businesses. Under a statutorily directed pilot program, purchases valued between \$2,500 and \$50,000 must be set aside for very small businesses (those businesses with no more than 15 employees and average annual receipts not exceeding \$1 million). This pilot program applies to supplies procured by DOE offices located in, and to services performed in, designated SBA districts identified in FAR 19.902. Within this dollar range, awards still may be made to 8(a) firms that are not very small businesses.

Small Business Competitiveness Demonstration. DOE is signatory to the Small Business Competitive Demonstration program established by the Small Business Competitiveness Demonstration Program Act of 1988. Currently, the program includes the following NAICS codes: Construction (236,237,238), Non-nuclear Ship Repair (336611), Architectural (541310) and Engineering Services (541330) including Mapping and Surveying (541360, 541370), and Refuse and related services (562). Additionally, as part of the Competitiveness Demonstration Program, participating agencies periodically develop their own list of Targeted Industry Categories (TICs). The intent is to expand participation by small businesses in designated industries, through the use of set-asides, increased management attention, and specifically tailored acquisition procedures. Firms in these TICs should be encouraged to use teaming and

joint venture arrangements that enable them to effectively compete for contracts. This list is currently under review and will be distributed by OSDDBU's when it is finalized.

Price Evaluation Adjustment for Small Disadvantaged Business Concerns. If a procurement is not otherwise set aside, price preferences may be used to facilitate an award to certified small disadvantaged businesses if the acquisition is for items or services in the authorized NAICS industry subsector or HUBZone small business concerns or to a firm that is both. For small disadvantaged businesses the current 10% price preference is known as a "price evaluation adjustment" (see FAR 19.1101). For HUBZone small business concerns, the 10% price preference is known as a "price evaluation preference" (see FAR 19.1307). If a firm is both a HUBZone small business concern and a small disadvantaged business competing for work in one of the designated NAICS industry subsectors, the two preferences can be combined entitling the firm to a 20% price evaluation preference (see FAR 19.1307(d)).

Set-Asides for HUBZone Small Business Concerns. If there is a reasonable expectation that proposals will be received from two or more small businesses certified by the SBA as Historically Underutilized Business Zone concerns and the award would be made at a fair market price, FAR 19.1305(b) requires that the award be set aside for HUBZone small business concerns.

HUBZone sole source awards. Contracting Officers may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides provided the acquisition meets requirements of FAR 19.1306(a).

Awards to Native American Business, Tribal Governments, and Alaskan Native Corporations. According to the SBA regulations (see 13 CFR 124.109); a business owned and controlled by a qualifying Native American tribe may qualify as a small disadvantaged business or, as an 8(a) firm, if accepted into the SBA program. Such firms may also qualify as HUBZone small business concerns (13 CFR 126) and would thus be eligible for HUBZone sole source awards (see FAR 19.1306), HUBZone set-asides (see FAR 19.1305), and the price evaluation preference for HUBZone small business concerns (see FAR 19.1307). SBA's rules for businesses owned and controlled by recognized tribal governments and for Alaskan Native Corporations (ANC) that have been admitted to SBA's 8(a) program (see 13 CFR 124.109) include special provisions that do not apply to other 8(a) concerns. Specifically, the 8(a) competitive thresholds of \$5,000,000 for acquisitions assigned manufacturing NAICS codes and \$3,000,000 for all other acquisitions that normally apply to 8(a) acquisitions do not apply to awards made to 8(a) businesses owned by tribal governments or ANCs. That is, awards valued in excess of the competitive threshold may be made to such entities on a sole source basis without regard to the estimated cost of the acquisition (see FAR 19.805-1 and 13 CFR 124.506(a)(iii) and (b)).

Awards to service-disabled veteran-owned small business concerns. On December 16, 2003, President Bush signed the Veterans Benefits Act of 2003 (Public Law No. 108-183 at section 308). This new law requires federal agencies and departments to give special consideration to small business concerns owned and controlled by service-disabled veterans during federal contracting and procurement. An interim rule amending the FAR to implement section 308 of the Veterans Benefits Act of 2003 was published in the May 5, 2004 issue of the Federal Register. The interim rule can be found online at:

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/pdf/04-9752.pdf>

B. SMALL BUSINESS PROCUREMENT TOOLS

Mentor-Protégé/Teaming

A proven method of increasing the participation of small businesses in the award of prime contracts is the use of teaming arrangements. DOE and SBA have Mentor-Protégé programs that promote teaming. Contracting Officers who seek to increase contract awards to small businesses can use either the DOE or SBA Mentor-Protégé program. However, if award is made under the DOE program, the Department will not receive credit for a prime contract award as an 8(a) or small business award.

DOE's regulations, which provide for a Mentor-Protégé Program, are at DEAR 919.70. The DOE Mentor-Protégé Program is designed to encourage prime contractors to assist small disadvantaged firms certified by the SBA under Section 8(a) of the Small Business Act, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities (HBCU), other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans in enhancing their capabilities to perform contracts and subcontracts.

DOE's Mentor-Protégé Program seeks to foster long-term business relationships between these small business entities and prime contractors, and to increase the overall number of these small business entities that receive contract and subcontract awards.

SBA's regulations (see 13 CFR 121.103(f)(3)(iii)) provide for a joint venture that may include a large business and an 8(a) firm which qualify as a Mentor and Protégé, respectively, under SBA's Mentor-Protégé Program (see 13 CFR 124.520). Such a joint venture will be recognized as small for the size standard corresponding to the NAICS code assigned to the procurement, and for purposes of 8(a) sole source procurements, as long as the participating Protégé 8(a) firm has not reached the dollar limit set forth at 13 CFR 124.519. Note: DOE Mentor-Protégé Program participants are not recognized as a small business in a joint venture arrangement.

Multiple Award Contracts

Solicitations for multiple award contracts (MACs) should be structured in a manner that will guarantee small business firms an opportunity to compete for prime contracts, which then will allow them to compete for individual orders under the contracts. The following techniques should be applied when using MACs to fill program requirements: (1) Contracting Officers should work closely with program officials and their Small Business Program Manager to identify small business opportunities early in the acquisition planning process; (2) Business strategies such as teaming arrangements should be encouraged in an effort to maximize opportunities for small businesses. Teaming arrangements not only increase business opportunities for small businesses, but also expand the skill mix of the team in some cases; (3) Multiple award contracts should be set-aside exclusively for competition among small businesses, to the greatest extent practicable; (4) If a total set-aside is not practicable, consideration should be given to identifying opportunities for a component of the statement of work to be set-aside for competition among small businesses; and (5) If a total or partial set-aside is not feasible, consideration should be given to reserving and specifying in the solicitation, a certain number of awards for small businesses.

Governmentwide Acquisition Contracts

A Governmentwide Acquisition Contract (GWAC)" is a task-order or delivery-order contract for information technology established by one agency for Governmentwide use. GWACs also are referred to as "multi-agency" or "omnibus" contracts. GWACs often simplify the acquisition process for the authorizing agency as the contracting agency may maintain, and make available to the authorizing agency, their list of pre-screened contractors capable of performing certain types of requirements. The Department of Commerce's GWAC is entitled "COMMERce Information Technology Solutions or "COMMITTS" and can be found online at: <http://www.commits.doc.gov/>. A searchable directory of GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for use by multiple agencies, can be found online at: <http://www.contractdirectory.gov/>.

C. SMALL BUSINESS MARKET RESEARCH

Sources Sought Synopsis. In accordance with FAR 5.2, Synopses of Proposed Contract Actions: Sources Sought Synopsis is a notice published in FedBizOpps at <http://www.fedbizopps.gov/> to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. Although the notice includes "screening criteria", the criteria are not used to "qualify" potential sources or to exclude potential competitors. The purposes of screening respondents are to allow the government to assess the potential competitive base, to determine whether a "Justification for other than full and open competition" is required, or whether various set-asides are appropriate.

Source Lists. The Program Manager and the Contracting Officer should work together to develop a list of sources to which the solicitation is transmitted. The source list should include those potential offerors who have responded affirmatively to the FedBizOpps announcement and those potential offerors whose past and present experience -- in terms of performance capability, logistic support, financial status, production capacity, etc. -- have demonstrated that they could perform the contract and would be inclined to submit a proposal. If in response to the FedBizOpps notice, a source that is not on the list requests a copy of the solicitation, it will be furnished a copy.

Bidders List. FAR 14.204, Records of invitations for bids and records of bids, requires that each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting Officers shall review and utilize the information available in connection with subsequent acquisitions of the same or similar items. The file for each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

Other Market Research Efforts. FAR 10.002(b)(2) includes additional ways agencies can determine industry's capabilities such as: (1) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements; (2) Reviewing results of recent market research for similar or identical requirements; (3) Publishing formal requests for information in appropriate technical or scientific journals or business publications; (4) Querying the Governmentwide database of contracts and other procurement instruments

intended for use by multiple agencies available at www.contractdirectory.gov and other Government and commercial databases; (5) Participating in interactive, on-line communication among industry, acquisition personnel, and customers; (6) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources; (7) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line; and (8) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

D. SMALL BUSINESS ACQUISITION PLANNING

Advanced Planning Acquisition Team

DOE has established an “Advanced Planning Acquisition Team” (APAT), comprised of the Office of Procurement and Assistance Management, the OSDBU, the Small Business Administration Procurement Center Representative (SBA-PCR) and the element requesting the acquisition. The Contracting Officer will refer to the OSDBU all proposed acquisitions over \$3 million (new or extension requests of existing acquisitions) which have not been proposed for small business set aside. OSDBU will review the analysis and conclusions with respect to the proposed action to determine if it is justified to not set it aside and, when justified, identify strategies to maximize small business participation as subcontractors. These reviews will apply to all procurement requests, including M&O contracts, orders against GSA schedules, and orders against GWACS.

The Contracting Officer shall submit the request for review to the OSDBU allowing 10 business days for the review process. The request for review will include the following: copies of the procurement request and the statement of work; the source list; and a statement of the reason(s) it cannot be set-aside. [Note the APAT requirement does not apply to NNSA.]

Small Business Program Managers

Contracting activity small business program managers, designated by the Head of the Contracting Activity (HCA), should perform the following functions: (1) Participate in the planning of, and make recommendations as to set aside, for acquisitions over \$100,000. The review process should address 8(a), HUBZone small business, small disadvantaged business, small business, service-disabled veteran-owned small business, and women-owned small business concerns; (2) Conduct the review before the issuance of the solicitation and complete the DOE Form 4220.2, Section 8(a)/Small Business Set-Aside Review; (3) Maintain copies of all completed DOE Form 4220.2, Section 8(a)/Small Business Set-Aside Review to the Small Business Program Manager for all requirements exceeding \$1,000,000 [\$100,000 applies to NNSA] ; and (4) Maintain liaison with the small business community.

Contract Bundling

The consolidation of smaller contracts that have been performed, or could have been performed, by small business concerns into a single contract awarded to a large business may have detrimental effects on some small businesses. As a consequence, Congress enacted legislation to regulate the consolidation of contracts. If contract consolidation is otherwise meritorious, such consolidated procurement should be awarded to the maximum extent practicable to small

business as specified in FAR Subpart 19.5. By definition, consolidated contracts awarded to small businesses are not bundled contracts. Likewise, M&O contracts are not bundled contracts. If a consolidated procurement is not set aside for small business, the Contracting Officer should rethink the acquisition strategy.

FAR 2.101 defines contract bundling as, "Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to- (i) The diversity, size, or specialized nature of the elements of the performance specified; (ii) The aggregate dollar value of the anticipated award; (iii) The geographical dispersion of the contract performance sites; or (iv) Any combination of the factors described in paragraphs (i), (ii), and (iii) of this definition." "Separate smaller contract" as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns. "Single contract" as used in this definition, includes multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR 16.504(c)); and an order placed against an indefinite quantity contract under a Federal Supply Schedule contract; or task-order contract or delivery-order contract awarded by another agency (i.e., Governmentwide acquisition contract or multi-agency contract). This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

Contracting activities are required to coordinate with the SBA Procurement Center Representative (SBA-PCR) on acquisition strategies or plans contemplating awards at or above \$5,000,000.

Program offices proposing to bundle a contract must quantify identified benefits and explain how their impact would be measurably substantial. Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract value (including options) of the bundled requirements if the value is \$75 million or less; or 5 percent of the estimated contract value (including options), if the value exceeds \$75 million.

If the proposed acquisition strategy involves substantial bundling (i.e., any bundling that results in a contract with an average annual value of \$5 million or more), the Contracting Officer must include the following in acquisition strategy documentation: (1) the specific measurably substantial benefits or the criticality of bundling to the Department's mission; and (2) plans to preserve and promote small business participation as prime contractors and efforts to include small businesses as subcontractors. Plans to preserve and promote small business participation in a bundled contract might include teaming by small business for the prime contract and may include the following: a factor to evaluate past performance under previous subcontracting plans; and inclusion of the clause at 52.219-10, Incentive Subcontracting Program in the resulting contract.

The APAT has been designated as the Department's focal point for the review of bundled acquisitions, excluding NNSA. DOE program offices intending to proceed with a bundled procurement must submit the acquisition to the Team for review to ensure conformance with the statutory requirements regarding bundling, and to identify ways to maximize the participation of small businesses in the procurement. Should the Team determine that the proposed bundling of a contract is not necessary and there is no agreement between the program office and the Team

about the need to bundle, the matter will be referred to the Deputy Secretary through the HCA and Senior Procurement Executive.

The Deputy Secretary, without power of delegation, may determine that bundling is necessary and justified if: (1) the expected benefits do not meet the thresholds identified in this section, but are critical to mission success; and (2) the acquisition strategy provides for maximum practicable participation by small business concerns.

Part II. Subcontract Awards to Small Business

HCAAs must ensure that purchasing systems of contractors for the management and operation of major sites and facilities include small business outreach programs. Contracting Officers shall ensure: (1) that all M&O contractors, except small businesses, with contracts over \$500,000 (\$1 million if construction) have a small business subcontracting plan in place that has aggressive small business goals and (2) that subcontract reports, Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and (SF) 295, Summary Subcontract Report, are submitted in a timely and accurate fashion reporting the actual small business achievements. Additionally, Contracting Officers, in consultation with Small Business Program Managers, shall meet periodically with directors of contractor purchasing to review the status of the contractor's performance against its small business subcontracting plan.

A. SUBCONTRACTING PLANS

Every subcontracting plan should, at a minimum, support achievement of the agency-wide goals negotiated with the SBA. Subcontracting plans reflecting less than the agency-wide goals must be approved at the HCA level with a copy of the justification forwarded to the OSDDBU. [Note this requirement does not apply to NNSA.] The Small Business Program Manager should review all subcontracting plans prior to acceptance. Small Business Program Managers should review, prior to submission through the Subcontracts Reporting System (SRS), and maintain copies of the SF 294 and SF 295.

B. SUBCONTRACTING PROCEDURES:

8(a) Pilot Program

Contractors responsible for the management or operation of sites and facilities are authorized to award subcontracts with a value of \$5 million or less for manufacturing NAICS codes and \$3 million or less for all other acquisitions on a noncompetitive basis to firms certified as participants by the SBA under its 8(a) program. Contractors may also reserve for competition among 8(a) firms requirements in excess of those thresholds. The contractor shall assure that awards are made at fair market prices and are identified as awards to 8(a) firms and Small Disadvantaged Businesses (SDBs) under the reporting provisions of the Small Business Subcontracting Plan clause. A special effort may be made to identify and make awards to 8(a) firms in HUBZones. If such a program is instituted, the contractor shall assure that awards are made at fair market prices.

HUBZone Set-Aside

Awards to HUBZone 8(a) Firms. For procurements under \$3 million (\$5 million for manufacturing NAICS codes) where an 8(a) certified firm can be identified and award can be made at a fair market price, an award may be made noncompetitively to a HUBZone 8(a). If the procurement is valued in excess of \$3 million (\$5 million for manufacturing) and two more HUBZone 8(a) firms can be identified, the procurement may be set aside for competition among HUBZone 8(a) firms.

Contractors responsible for the management and operation of DOE sites and facilities are authorized to use HUBZone set-aside and HUBZone sole source procurement techniques in the award of subcontracts under conditions similar to those applicable to the award of Federal prime contracts.

Women-Owned Small Business Evaluation Preference

Contractors responsible for the management and operation of sites and facilities are authorized to provide for an evaluation criterion that reflects a preference in the award of subcontracts to firms that propose to make significant use of women-owned small business (WOSB) concerns in the performance of the proposed subcontract.

Discretionary Set-Asides

Contractors responsible for the management and operation of sites and facilities are authorized to set aside purchases at any dollar value for award to small businesses and to make purchases valued up to \$50,000 [\$100,000 for NNSA contractors] on a sole source basis to small businesses. If such programs are instituted, the contractor shall assure that awards are to be made at fair market prices.

DOE Mentor-Protégé Program

Contracting Officers should encourage prime contractors to enter into Mentor-Protégé agreements with small businesses. DOE regulations that provide for a Mentor-Protégé Program can be found at DEAR 919.70. The Department's Mentor-Protégé Program seeks to foster long-term business relationships between small business entities and prime contractors, and to increase the overall number of small business entities that receive contract and subcontract awards.

Mentors recognized under the DOE Mentor-Protégé Program are authorized, subject to the best commercial practices and procedures required by DEAR 970.4402-2(d), to award noncompetitive subcontracts, of any dollar value, to their Protégés. Further, other site and facilities management contractors may award noncompetitive subcontracts to a Protégé of another DOE Mentor contractor if those awards are made at fair market prices. OSDBU maintains a current listing of active Mentor-Protégé agreements.

Part III. Other Considerations

A. SECURITY CLEARANCES

Much of the Department's work is classified and performance of that work requires cleared facilities and staff. For many small businesses, obtaining appropriate clearances may require background checks that often take three months to complete; whereas, large businesses are more likely to have personnel and facilities that already have the necessary security clearances. Contracting Officers should consider the following when processing procurements that involve classified work:

Security personnel should be consulted when preparing draft statements of work that may involve security requirements to assure that the security requirements are not overstated.

Solicitations should be issued and the award made sufficiently in advance to allow for the processing of required security clearances. The absence of existing personnel security clearances should not be the sole basis for denying an award. Offerors should be allowed a reasonable time for the workforce of the successful offeror to be cleared.

Solicitations that require security clearances could provide for the issuance of a notice to proceed when the security requirements have been satisfied.

Solicitations that require security clearances for the successful offeror should include a statement that employees who have been cleared by any Federal agency may meet the security requirements of the contract.

If the personnel security clearance required is level "L" (i.e., secret) it may be that a full background investigation would not be required, presenting no particular obstacle to participation by small businesses. If the clearance required were level "Q" (i.e., top secret, or higher) a background investigation would be required. Security directives provide for expedited background investigation where a level "Q" clearance is required.

Personnel security clearances may be expedited if the time required for standard processing will result in serious delay or interference in an operation or project essential to the Department's mission. In certain circumstances (e.g., urgent need) and under certain conditions (e.g., completion of psychological, drug, and polygraph tests), an interim clearance may be granted while a background investigation is being conducted.

Further information is contained in a pamphlet, *DOE's Security Requirements for Small Business Contractors*. It can be found at the bottom of the following web site:

<http://www1.pr.doe.gov/small.html>

B. SMALL BUSINESS STATISTICS

Collecting and Reporting Small Business Contracting Information

The systems for collecting and reporting small business award information are the Procurement and Assistance Data System (PADS - *DOE prime contract award data*), and the Subcontract Reporting System (SRS - *prime contractor subcontracting award data*).

The accuracy of the statistics reported in these systems is vital to the credibility of the Department's performance in this area, which is continually monitored by Congress, the SBA, trade organizations, small business advocacy groups, and other entities.

Improving the Accuracy of Small Business Information

HCAAs should assure that proper quality control systems are in place to ensure the accurate reporting of small business data.

HCAAs should include the accuracy of Federal contract data as a compliance standard for the contracting activities' Federal assessment program.

The Contracting Officer is responsible for taking all reasonable steps to validate an offeror's Small Business representation prior to any Federal prime contract award. [Note: NNSA Contracting Officers shall adhere to the FAR standard of self-certification.]

The Contracting Officer should refer to the SBA and the Office of the Inspector General any certification of small business status that is inaccurate and refer instances of misrepresentation of small business status to the DOE/NNSA Procurement Executive for consideration of suspension/debarment.

The Contracting Officer is responsible for ensuring that M&O contractors (1) establish reasonable controls to ensure small business subcontracting data reports are accurate, including data submissions to electronic data collection systems; (2) maintain current and accurate listings of small business suppliers to the extent such listings are used; (3) obtain certification of size status; (4) conform to the list of exclusions from subcontract reporting in the SBA document, *Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals & Achievements*, as provided by OSDDBU; and (5) refer to the Contracting Officer instances of small business status misrepresentation.

C. CENTRAL CONTRACTOR REGISTRATION DATABASE

The Federal Government maintains an interactive web site to access the Central Contractor Registration (CCR) program at <http://www.ccr.gov/>. CCR is a small businesses database of with advanced search capabilities. It allows firms to register their company profile and allows Contracting Officers to search the database with results stratified by numerous qualifiers (e.g., WOSB, SDB, 8(a), HUBZone). The qualifiers can be combined to narrow the search results to very specific categories of small businesses having very specific qualifications. Contractors may also use the search capabilities of CCR.

D. SECRETARY'S SMALL BUSINESS AWARDS

DOE recognizes the outstanding small business achievements of its departmental elements, prime contractors and other organizations. Colleagues and headquarters personnel nominate outstanding individuals to receive the "Secretary's Small Business Awards." The awards program was established in 1978. The following awards are presented annually:

Element Awards:

- (1) Award for the element that breaks out the greatest percent of small business awards from an existing facility management contract.
- (2) Award for the element with the greatest percentage increase in awards to small business from the prior year.
- (3) Award for the element with the highest percentage of diversity in its small business awards.

M&O Awards:

- (1) Award for the M&O with the most significant small business teaming arrangements.
- (2) Award for the M&O with the greatest percentage increase in awards to small business from the past year.
- (3) Award for the M&O with the highest percentage of diversity in its small business awards.

Small Business Program Manager Awards:

- (1) Award for the SB program manager who has made the most progress in promoting small business contracting at the HQ level.
- (2) Award for the SB program manager who has made the most progress in promoting small business contracting at the field level.
- (3) Award for the SB program manager who has made the most progress in promoting small business contracting at the M&O level.

Mentor-Protégé Award:

Award for the most outstanding mentor, protégé or mentor-protégé team.