

Small Business Program Handbook



U.S. Department of the Treasury

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Foreword

Historically, the Department of the Treasury has been a leader in fostering our nation's economic development. The small business community has consistently shown that they are vital to the economic health of our nation. Therefore, because small businesses make valuable contributions to our economy, we have programs and policies in place designed to provide an environment in which they have the maximum practicable opportunity to participate in our acquisition program. Within the Department of the Treasury, this is a team effort.

This handbook was written for Department of the Treasury acquisition personnel to provide background information and detailed procedures to help you implement the Small Business Program within your bureaus. Although each bureau's program is slightly different, we all reap the same benefits of vigorous small business participation in our procurements: increased competition, better products, and better prices for those products. This translates into greater value for our most important customers, the taxpayers of this country.

This handbook revises and greatly expands the 2001 Small Business Handbook. Some of the important changes you will find as you read it are:

- Re-arrangement of chapters to group the small business programs together;
- Information on the new requirements of the Historically Underutilized Business Zone (HUBZone) program;
- Information on the Veteran-Owned Small Business and Service Disabled Veteran-Owned Small Business programs;
- Information on the Department of the Treasury's Anti-Bundling Strategy.

Working with small businesses can be inspiring, satisfying, and rewarding. By working together, we can make great strides toward increasing opportunities for small businesses at Treasury. I hope that this handbook will continue to be a valuable source of information and advice for each of you.

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Development

SMALL BUSINESS PROGRAM HANDBOOK

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CHAPTER 1

INTRODUCTION

In the Small Business Investment Act, codified at 15 U.S.C. § 631(a), Congress declared the policy behind the Act, stating:

*The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well being but to the security of this Nation. Such security and well being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. **It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns** in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.*

Moreover, in the Competition in Contracting Act, codified at 41 U.S.C. § 252(b), Congress repeated this sentiment, stating:

It is the declared policy of the Congress that a fair proportion of the total purchase and contracts for property and services for the Government shall be placed with small business concerns.

Small businesses are important to the United States. We have Government programs to support and assist small businesses because they make valuable contributions to our economy.

- 99% of non-farm businesses are small.
- More than 16 million Americans own a small business. There are approximately 22.1 million businesses in America.
- Small businesses employ 53 percent of the private work force in the United States.

- Small businesses contribute 47 percent of all sales in the country.
- Small businesses are responsible for 50 percent of the gross domestic product.
- Of the almost 8 million jobs created since 1993, an estimated **76 percent** were produced by small business-dominated industries.
- Small businesses create most new American products and technologies, including such things as the computer chip, the rocket engine, xerography, and the ballpoint pen.
- Small businesses contribute substantial tax revenues.
- Small firms are a vital part of the Nation's industrial/defense mobilization base.
- They generate competition and ensure a competitive economic climate.
- Despite their large numbers and important role in the economy, small businesses only receive about 22% of Federal Government prime contract awards. Large businesses receive more than 75% of all federal procurement dollars.

A. AUTHORITY

The Small Business Act, Public Law (P.L.) 85-536, codified at 15 U.S.C. § 631, *et seq.*, began with the statement of congressional policy quoted at the beginning of this Chapter. This Act, as amended, established the authority for loans, procurement set-asides, management counseling, certificates of competency, and advocacy to assist small businesses. The 1978 amendments to the Act, P.L. 95-507, established small business-small purchase set-asides, subcontracting plan requirements for certain prime contracts, and provided the statutory basis for the 8(a) business development program. P.L. 95-507 further required the establishment of an Office of Small and Disadvantaged Business Utilization (OSDBU) in each Federal agency.

P.L. 100-656, the 1988 amendments to the Act, introduced competition to the 8(a) program and established a process for setting goals for procurement prime contract and subcontract awards to small and small disadvantaged business concerns. P.L. 100-656 required that liquidated damages be assessed against prime contractors who fail to make a good faith effort to achieve their subcontracting plan goals.

P.L. 100-533, the Women's Business Ownership Act of 1988, also amended the Small Business Act to make statutory the Federal program for women-owned small businesses created in 1979 under Executive Order 12138. The Act also established the National Women's Business Council. Policy Letter 80-4 of the Office of Federal Procurement Policy (OFPP) established uniform Government-wide procurement policies for women-owned small businesses. Federal agencies are required to encourage women-owned small business participation in their prime and subcontract awards.

P.L. 103-355, the Federal Acquisition Streamlining Act (FASA) of 1994, also amended the Small Business Act to accommodate a Government-wide goal of 5 percent of total prime contract awards to women-owned small businesses. This Act deleted existing separate coverage relating to women-owned businesses and revised existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. Additionally, P.L. 103-355 removed the Labor Surplus Area (LSA) set-aside and subcontracting programs. The Standard Forms 294 and 295 were also revised and streamlined.

The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631) created the HUBZone Program (sometimes referred to as the HUBZone Empowerment Contracting Program), which created a Government-wide goal of 3 percent of total prime contract awards to HUBZone small businesses. The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

The Veterans Entrepreneurship and Small Business Development Act of 1999, P.L. 106-50, 113 Stat. 233 (1999), amended the Small Business Act to include service disabled veterans, and set a Government-wide goal of **3 percent of total prime contract and subcontract awards to service disabled veteran-owned small businesses**. Additionally, P.L. 106-50 requires data to be collected on awards to veteran-owned small businesses.

The small business program is implemented in Part 19 of the Federal Acquisition Regulation (FAR), and in Part 1019 of the Department of the Treasury Acquisition Regulation (DTAR).

B. TREASURY POLICY AND RESPONSIBILITY

It is the policy of the Department of the Treasury to ensure opportunities to compete for and receive a fair share of the Department's procurement expenditures are provided to small businesses, HUBZone small businesses, small disadvantaged businesses, 8(a) concerns, women-owned small businesses, veteran-owned small businesses, and service disabled veteran-owned small businesses.

The Assistant Secretary (Management) and Chief Financial Officer is the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) for the Department of the Treasury. The Director, OSDBU has established a Departmental Small Business Program (SBP) to implement sections 8 and 15 of the Small Business Act and the policy stated at the beginning of this section.

The Director, OSDBU has designated the Director, Office of Small Business Development (D,OSBD), to manage the SBP. Section 15(k) of the Small Business Act, established by P.L. 95-507, codified at 15 U.S.C. § 644(k)(7), requires that the Director, OSDBU "have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this Act." This authority is delegated, with the responsibility for overall management of Treasury's small business program, to the D, OSBD. The D,OSBD also cooperates and consults with the Small Business Administration (SBA) to ensure the effective implementation of the Small Business Act in Treasury's procurement programs.

C. SMALL BUSINESS PROGRAM GOALS

The Small Business Act (15 U.S.C. 644(g)), as amended by P.L. 100-656, requires that the President establish annual Government-wide goals for procurement awards to small businesses, HUBZone small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, and service disabled veteran-owned small businesses. The statutory minimum goal for small business participation must be no less than 23 percent of the total value of prime contract awards. The statutory minimum goal for small disadvantaged business and women-owned small business participation shall be no less than 5 percent of the total value of prime contract awards and 5 percent of the total value of subcontract awards. The statutory minimum goals for HUBZone small business participation shall be no less than 2.5 percent of the total value of prime contract awards for FY 2002 and shall increase to 3 percent in FY 2003. The statutory minimum goals for service disabled veteran-owned small business participation is 3 percent. Currently, there is no minimum goal for veteran owned small business, however, data of veteran-owned small business awards is to be collected.

The individual agency goals must represent the estimated maximum practicable opportunity for small businesses to participate in the performance of contracts let by the agency. Because of the nature of our purchases, Treasury's goals for small business, small disadvantaged business and women-owned small business have usually exceeded these statutory minimums.

The D,OSBD, after consultation with the D,OSDBU and the SBA, establishes annual Departmental goals for prime contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses, 8(a) firms, women-owned small businesses, and service disabled veteran-owned small businesses. The D,OSBD also establishes goals for subcontract awards to small, small disadvantaged, women-owned small businesses, and service disabled veteran-owned small businesses. While there is no statutory goal for prime and subcontract awards to veteran-owned small business concerns, federal agencies are required to collect award data.

Bureau heads are responsible for attainment of their SBP goals. Bureau goals, based on previous performance and projected procurement, are established by the D,OSBD after consultation with the Bureau Chief Procurement Officer (BCPO) and the bureau Small Business Specialist (SBS). Headquarters procurement offices are encouraged to develop goals for their field procurement offices. Bureaus who achieve their SBP goals are eligible to receive special awards and recognition for their accomplishments.

Reports of the Department's performance against its goals are retrieved annually from the Federal Procurement Data System for the SBA for submission to the President and the Congress. The reports must explain any failure to achieve a goal and the actions planned to achieve goals in the succeeding fiscal year.

D. APPOINTMENT OF BUREAU SMALL BUSINESS SPECIALISTS

1. Appointment Procedures

The head of each bureau and the Departmental Offices shall appoint, after consultation with the D,OSBD, a SBS to undertake the daily responsibilities for operation of the SBP within the bureau. The authority to appoint a SBS may be delegated to the BCPO or at least one level above the Field Area Chief Procurement Officer (FCPO).

Heads of bureau field offices with procurement authority shall, with the concurrence of the headquarters BCPO and SBS, appoint persons to perform the SBS duties consistent with the level of small business program activity in their field office. Bureau headquarters procurement offices are responsible for ensuring that the small business program is appropriately staffed and monitored at their field procurement offices.

SBS appointments shall be in writing from the bureau or field area office head or designee to the SBS, and clearly state that the appointment is effective only as long as the individual holds his/her current position. A copy of the appointment letter shall be provided to the D, OSBD.

The SBS for U.S. Customs Service Headquarters, Internal Revenue Service Headquarters, the Bureau of Alcohol, Tobacco, and Firearms, and the Bureau of Engraving and Printing shall be appointed on a full-time basis. All other bureau SBS's shall be appointed to provide at least one-half of their working time to SBS duties.

2. Qualifications of Bureau Small Business Specialists

The headquarters SBS shall be at least at the GS-13 level or higher. The field procurement office SBS shall be at least at the GS-12 level or higher. Exceptions may be made with the mutual agreement of the BCPO and D, OSBD. Individuals performing SBS duties shall be in the GS-1102 contracting series. These individuals shall have applicable training in Treasury's SBP, be experienced in SBP matters, and be well versed in contracting. SBS position descriptions and performance criteria reflecting the duties and responsibilities of the position shall be developed by each bureau and the Departmental Offices in consultation with the D,OSBD.

The SBS function shall be separate from the procurement operations function. For example, the SBS could be on the procurement policy staff or otherwise independent of the contracting office and possess a working knowledge of acquisition regulations and procedures. If the SBS is also a contracting officer, an alternate SBS shall be appointed for that contracting officer, using the procedures described above. The alternate shall perform the SBP reviews on procurement where the SBS will sign as the contracting officer. Requests for waivers from the SBS appointment criteria or qualifications shall be forwarded to the D,OSBD for approval.

3. Supervision of Bureau Small Business Specialists

The D,OSBD has supervisory authority over bureau small business specialists to the extent their functions and duties relate to the SBP. The purpose of this requirement of the Small Business Act is to ensure that the SBS is able to carry out the SBP in an independent manner, which fulfills the intent of the Small Business Act. As a further fulfillment of the intent of the Small Business Act, all designated SBS's shall be federal employees. This requirement is not intended to mean that the D,OSBD will supervise the SBS to the degree of establishing daily priorities or assigning individual tasks, but rather that the D,OSBD will support the SBS as the technical and policy expert and adviser on matters relating to the small business program. Upon request, the D,OSBD will provide the SBS's line supervisor in the bureau an evaluation of the SBS's performance of his or her small business program duties for inclusion in the SBS's annual performance appraisal.

E. DUTIES OF BUREAU SMALL BUSINESS SPECIALISTS

The primary duties of the bureau SBS are to:

- Review all actions between \$25,000 and \$100,000 that involve the dissolution of the mandatory reservation for small businesses. Bureaus may establish lower review thresholds. The SBS shall, whenever possible, add the names of potential small business sources to solicitation mailing lists. The review shall be documented in the contract or order file as prescribed in Chapter 3 of this Handbook.
- Review all procurement requisitions over the simplified acquisition threshold (\$100,000) to make recommendations regarding set-asides for the small business programs. Bureaus may establish lower review thresholds. The SBS shall, whenever possible, add the names of potential small business sources to solicitation mailing lists. The review shall be documented in the contract or order file as prescribed in Chapter 3 of this Handbook.
- Review all proposed contracts over the subcontracting plan threshold (\$500,000/\$1,000,000 for construction) to make recommendations for subcontracting possibilities.
- Review all proposed prime contractors' subcontracting plans, using the standardized subcontracting review checklist, prior to submitting the plan to the SBA Procurement Center Representative (PCR) for concurrence and the D,OSBD for approval (unless approval authority has been delegated to the SBS). The SBS review shall include recommendations regarding acceptance or rejection of the plans. If the plan is incomplete or otherwise unsatisfactory, the SBS shall work with the contracting officer and the prime contractor to negotiate an acceptable plan.
- Serve as the Bureau's primary contact to coordinate with the SBA, the SBA PCR, the D,OSBD, other government agencies and the business community on SBP matters.
- Coordinate with the BCPO, contracting staff and bureau Competition Advocate to ensure that the SBP objectives are fully integrated into the bureau's broad procurement program.

- Develop and maintain a program to identify small business, HUBZone small business, small disadvantaged, women-owned small business, veteran-owned, and service disabled veteran-owned sources.
- Assist small business concerns to obtain timely payments, late payment interest penalties, or information due to such concerns per the requirements of 15 U.S.C. § 644(k)(6) (See FAR 32.909).
- Certify on each "Justification for Other than Full and Open Competition (JOFOC)," TD F 70-06.6, that a search of vendor files and SBA's ProNet database on the World Wide Web was made to identify potential offerors. If any sources are found, the SBS shall attach a list of the vendors to the JOFOC, and in conjunction with the SBA/PCR, recommend disapproval if sufficient qualified sources are identified.
- Assist contract specialists and contracting officers to identify small business sources for particular acquisitions. The SBS shall query the ProNet system on the World Wide Web, and vendor capability statements on hand. If no small business sources are found for any given acquisition, the SBS shall consult the SBA Procurement Center Representative (PCR) and the D,OSBD for assistance.
- Participate in the Advance Acquisition Process to determine acquisition strategies, including set-aside possibilities, aggressive subcontracting plans, etc.
- Be knowledgeable of the bureau's Forecast of Contract Opportunities, to identify potential set-asides and assist vendors in marketing to the appropriate program offices.
- Assist program managers as early as possible in the acquisition cycle to identify potential small business sources, including arranging for and attending marketing presentations by such firms.
- Verify that solicitations that are total or partial small business set-asides clearly set forth the applicable North American Industry Classification System (NAICS) code and small business size standard.

- Ensure that financial assistance available under existing regulations is offered (e.g., negotiation of payment due dates, progress payments, advance payments, etc.), and that requests for such assistance by small business offerors are not construed as a handicap in contract awards.
- Participate in pre-award surveys conducted by the bureau to make preliminary determinations of responsibility of small business concerns, and ensure that prospective contractors found to be irresponsible are aware of their option to apply for a certificate of competency.
- Ensure that the bureau is accurately reporting its prime small business awards into the Treasury Acquisition Data System (TADS) and its small business subcontracting awards into the TADS subcontracting system by proper and timely submission of Individual Contract Action Reports (SF279), the Summary Contract Action Report (\$25,000 or Less) (SF 281), and the SF295 reports.
- Make copies of solicitations available to SBA upon request.
- Upon request, provide to any small business a copy of the solicitation mailing list for any acquisition that might offer subcontracting possibilities. A list of firms responding to the solicitation shall not be provided to any firm.
- Participate regularly in government and industry conferences to assist small businesses and promote Treasury's acquisition programs upon request of the D,OSBD or Director, OSDBU.
- Advise and counsel small business firms on acquisition matters and assistance available from other Federal agencies, and provide Departmental and bureau literature to those businesses.
- Participate in the development, implementation, and review of automated contracting systems to ensure that the interests of the small business program are considered.
- Develop, with the BCPO, the bureau's annual small business goal proposals and negotiate bureau goals with the D,OSBD.
- Develop, with the BCPO, specific program activities and objectives to increase small business participation in the bureau's procurement.

- Ensure that the bureau's small business program is frequently publicized in the appropriate media. This could include internal newsletters, weekly reports, and activities such as conducting SBP briefings for program personnel.
- Monitor prime contractor compliance with subcontracting plans. Conduct subcontracting compliance reviews of prime contractor's subcontracting programs.
- Report any small business contractor performance problems identified by the contracting officer promptly to the D,OSBD, the SBA PCR and the SBA contracting officer.
- Provide reports and other information to the D,OSBD, as required, regarding bureau small business program performance.

F. ENCOURAGING SMALL BUSINESS PARTICIPATION

Treasury contracting officers shall refer to Federal Acquisition Regulation (FAR) 19.202-1 to ensure that small business concerns have an equitable opportunity to compete for all procurement opportunities.

In addition, Treasury Bureau Chief Procurement Officers shall take the following actions to encourage small business participation:

- Support the participation of the SBS in the advance procurement planning process.
- Prepare annually a forecast of contract opportunities, which identifies each anticipated purchase in excess of \$100,000. The forecast preparation should be coordinated with the bureau SBS. A description of the purchase, the North American Industry Classification System code, the estimated value, the estimated quarter for release of the solicitation, the name and telephone number of a contact person for each entry, etc., shall be identified. The bureau forecast shall be submitted to the Office of Small Business Development (OSBD) for consolidation into the Departmental forecast. The specific deadline for submitting forecast information will be set forth in a memo from the OSBD on a fiscal year basis.

- Use total or partial small business set-asides whenever there are at least two responsible small businesses that are qualified to respond (see FAR 19.502-2 and 19.502-3).
- Use 8(a) set-asides whenever qualified 8(a) firms can be identified for a particular acquisition (see FAR 19.804-1).
- Ensure that the bureau has access to the SBA's ProNet system on the World Wide Web.
- Assist small businesses in receiving timely payments as required by 15 U.S.C. § 644(k)(6), and FAR 32.9. Additionally, FAR 19.702 provides that it is the "policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts"

G. OUTREACH ACTIVITIES

1. Introduction

It is the policy of the Department of the Treasury to engage in a meaningful, aggressive outreach program to assist, counsel, and advise small, HUBZone small business, small disadvantaged, women-owned small business, veteran-owned, and service disabled veteran-owned small business concerns on procedures for doing business with Treasury.

Our mission is to:

- assist small businesses of all types; including those owned by minorities, women, veterans, service disabled veterans, and those located in historically underutilized business zones, to develop, grow, and ensure their long-term success;
- continually foster an environment where these highly skilled suppliers can compete successfully for a fair share of Treasury's procurement on their own merits; and
- assist large businesses to increase subcontracting opportunities for small businesses.

The Department has developed specific marketing materials and outreach activities to accomplish our mission. Specific outreach activities are highlighted in the following paragraphs.

2. Marketing Publications

The Department of the Treasury publishes two publications that help small, HUBZone small, small disadvantaged, women-owned, veteran owned, and service disabled veteran-owned small businesses in their marketing efforts. The two publications are as follows: (1) The *Forecast of Contract Opportunities* lists potential procurement opportunities for each bureau, and (2) The *Small Business Subcontracting Opportunities Directory* lists the Department's major prime contractors with subcontracting plans. The above publications also list the bureau Small Business Specialists. Publications can be obtained via the Internet on Treasury's Home Page at <http://www.treas.gov/sba>, or by faxing a request for a hard copy of the above publications to (202) 622-4963. The faxed request must include the company's name, mailing address, and a point of contact.

3. Vendor Outreach Sessions

The Department's Office of Small Business Development, in conjunction with the bureau SBSs, sponsors a series of small business Vendor Outreach Sessions (VOS). The purpose of the sessions is to provide the small business community the opportunity to meet with the Treasury SBSs to discuss their capabilities and learn of potential procurement opportunities. Also, Treasury Prime Contractors and other Government agencies are often invited to participate in the VOS sessions so that small businesses can learn of potential Treasury subcontract opportunities or other agency procurement opportunities. Special VOS sessions for women-owned businesses, veteran-owned/service disabled veteran-owned small businesses, counseling with bureau Information Technology Program Managers, and Treasury Prime contractors are also held.

The sessions are usually scheduled once a month between 9:00 a.m. and 12:00 noon, and are generally held in the Washington, DC metropolitan area.

Vendors are required to schedule their appointments, in advance, via the Treasury small business website (<http://www.treas.gov/sba/vos.html>) with the individual bureaus in which there is a mutual interest. The appointments are limited to fifteen minutes to allow all vendors an equal opportunity and are intended to allow a company introduction. A follow-up meeting with bureau program personnel may be scheduled for a later date, if appropriate.

4. Bureau Outreach Activities

Treasury's eight bureaus engage in a number of outreach activities. For example, the Internal Revenue Service (IRS) hosts an 8(a) seminar approximately twice per year to assist and educate the 8(a) vendors in marketing to the IRS, preparing cost/price and technical proposals, and answering questions regarding upcoming procurement opportunities for the 8(a) community.

Another example of bureau outreach comes from the Bureau of Engraving and Printing. They sponsor an annual Vendor Outreach Session in the Fort Worth, Texas area.

The bureaus are very proactive in developing new outreach opportunities to ensure that the small business community continues to be successful in doing business with the Department of the Treasury.

5. Other Outreach Activities

Throughout the year, Treasury is asked to participate in a number of other outreach activities. These include: (1) Minority Enterprise Development Week, (2) Small Business Week, (3) Congressionally sponsored procurement fairs, (4) Trade Association Conferences, and (5) various networking breakfasts and speaking engagements. Treasury also takes the lead for the annual OSDBU Director's conference, held each spring.

The bureau SBSs supplement the D, OSBD and staff in attending the above outreach events. The events allow the Department to showcase its prime and subcontract procurement opportunities and accomplishments.

H. DEPARTMENTAL APPROVAL OF SMALL BUSINESS PROGRAM ACTIONS

Approval of the D, OSBD is required for all waivers or deviations from SBP policies described in this Handbook.

The bureau headquarters SBS has authority to approve waivers or deviations from SBP policies, using the procedures set forth in this Handbook, for procurements whose total value is less than \$100,000. This authority extends to actions such as withdrawal or modification of small business or Section 8(a) set-asides; waivers of repetitive set-asides; and review of size protest and certificate of competency referrals. The bureau headquarters SBS has authority to approve waivers of the class set-aside program up to \$1,000,000 (\$3,000,000 for construction). The bureau headquarters SBS may approve actions within the threshold for the headquarters procurement office and field procurement offices. Copies of all actions taken shall be provided to the D, OSBD by the bureau SBS.

Bureaus may request authority for their SBS to approve SBP actions at higher dollar thresholds, including the authority to approve subcontracting plans. Such approval will be delegated in writing by the D,OSBD. In order to be considered for this increased authority, bureaus must demonstrate their strong commitment to the objectives of the SBP, and that these objectives are fully integrated into their broad procurement program.

Minimum qualifications for bureaus to receive delegated SBP authority will include adequate staffing for the SBP, including at least one full-time SBS; conformance with the requirements that the SBS be in the GS-1102 contracting series, knowledgeable of procurement, contracting and small business policies and procedures, and separate from the procurement operations function; the presence of an effective program for administering subcontracting plans and tracking contractor performance; evidence of strong management support for the small business program; and a reasonable upward trend of SBP goal achievement.

CHAPTER 2

SMALL BUSINESS PROGRAM ELIGIBILITY

A. GENERAL

To be eligible for set-aside contracts and other assistance programs available to small businesses, a concern must be small as defined in the standards established by the Small Business Administration (SBA). For Federal procurement purposes, a small business is a concern, including its affiliates, which is organized for profit, independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts and which further qualifies under the industry criteria in the SBA size standard regulations, 13 CFR Part 121. The SBA Administrator establishes standards for classifying small businesses and has the sole authority to determine a firm's size status.

B. CLASSIFYING PROCUREMENTS

Each Treasury solicitation which includes the Small Business Program Representations at FAR 52.219-1 shall contain the appropriate North American Industrial Classification System (NAICS) code and corresponding small business size standard for that procurement in all solicitations above the micro-purchase threshold, whether or not the solicitation is set aside for small business (see FAR 19.303(a)).

1. Determining the NAICS Code

For size standard purposes, procurements are classified in the industry whose definition best describes the principal nature of the product or service being acquired as required by 13 C.F.R. 121.402(b). The NAICS code Manual, published by the Office of Management and Budget, categorizes over 5000 specific industries by major group, such as construction, manufacturing, wholesale trade and services. Copies of the manual are available from the Government Printing Office and the National Technical Information Service (Order no. PB 98-127293).

A product or service should be classified in only one industry. When acquiring a product or service that could be classified in two or more industries with different NAICS codes and size standards, contracting officers should apply the NAICS code that is dominant in describing the principal purpose of the work involved. This may or may not be the NAICS code for the industry accounting for the greatest percentage of the contract price. For example, a construction contract to replace sewer lines calls for excavation work (NAICS 235930) and laying of sewer lines (NAICS 234910). The excavation comprises 30 percent of the estimated contract price, the laying of sewer lines, 70 percent. Since the sewer line replacement describes the fundamental nature of the project, the contracting officer would classify the procurement in NAICS 234910, with a size standard of \$28.5 million in average annual receipts.

If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, the offeror must meet the size standard for each item that it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price as required by 13 C.F.R. 121.407.

To make these determinations, the contracting officer may consider previous government procurement classifications of the same or similar products or services and additional information on the industries involved and the product or service being procured. The contracting officer may also consider which classification would best serve the purposes of the Small Business Act, that is, encourage the greatest number of small business offers as required by 13 C.F.R. 121.402(b).

2. Determining the Small Business Size Standard

Size standards are established on either a firm's average number of employees during the preceding 12 months or its average annual receipts for the past three fiscal years. Any particular NAICS code will have a size standard expressed in either number of employees or dollars of receipts, but not both. To make a determination of its size, a company must include the employees or receipts of any affiliates it may have as required by 13 C.F.R. 121.902(b).

Once the NAICS code has been established, the corresponding small business size standard can be found by consulting the SBA size standard regulations, 13 CFR Part 121. The bureau SBS has current copies of 13 CFR Part 121 available for reference.

CHAPTER 3

REQUISITION REVIEW

A. ACTIONS UNDER THE SIMPLIFIED ACQUISITION THRESHOLD

1. **Micro-purchases**

Micro-purchase means an acquisition of supplies or services (except construction), the aggregate amount of, which does not exceed \$2,500, except that in the case of construction, the limit is \$2,000. Micro-purchases may be awarded without competitive quotations if the contracting officer or individual appointed in accordance with FAR 1.603-3(b) considers the price reasonable. To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers. Further, it is the policy of the Treasury Department to use small businesses to the maximum extent practicable for micro-purchases.

2. **Small Business Set-Asides Using Simplified Acquisition Procedures**

Every open market acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 but not over \$100,000, is statutorily reserved exclusively for small business concerns as required by 15 U.S.C. § 644(j). Foreign purchases and purchases from required sources of supply (Federal Prison Industries, Committee for Purchase from People Who Are Blind or Severely Disabled, **mandatory** Federal Supply Schedule contracts, etc.) are exempt from this requirement as required by FAR 19.502.1(c).

If the contracting officer determines that there is not a reasonable expectation that quotations will be received from two or more responsible small business firms that are competitive in terms of market price, quality and delivery, the set-aside may be dissolved and the purchase completed on an unrestricted basis. The purchase order file (TD F 76-01.1) must be documented with the reason for the unrestricted purchase.

Item 6 of TD F 76-01.1, "Purchase/Delivery Order/BPA Record," provides a format for documenting the method of procurement used. If the purchase is not a set-aside, one of the reasons listed in the remaining blocks of Item 6 shall be checked. This file documentation, required by FAR 19.502-2(a), must be completed and signed by the contracting officer (if order is between \$2,500 and \$25,000) and by the bureau SBS (if order is between \$25,000 and \$100,000) **prior** to awarding the unrestricted purchase. (Note: if the SBS must sign the folder, i.e., requisitions over \$25,000, the folder must be signed prior to synopsis in the Federal Business Opportunities [FedBizOpps]).

3. Federal Supply Schedule Buys

In accordance with FAR 8.4046(b), contracting officers are strongly encouraged to consider three Federal Supply Schedule Small Businesses first before considering placing an order with a large business. Remember that orders placed against the schedules may be credited toward the ordering agency's small business goals.

B. ACTIONS OVER THE SIMPLIFIED ACQUISITION THRESHOLD

1. SBS and PCR Review

The bureau SBS must review all procurement actions over the simplified acquisition threshold. In addition, the SBA Procurement Center Representative (PCR) must review all procurement actions over the simplified acquisition threshold in which an unrestricted procurement is contemplated. The review is made through the use of the Small Business Review Form (see Appendix 3-1). To help contract specialists in determining what type of set-aside should be used for a particular requirement, an order of consideration has been provided as a table at Appendix 3-2. This table details a recommended order of consideration based on FAR 19. Bureaus may establish lower review thresholds. Requisitions and Statements of Work should be attached to the Small Business Review Form and provided to the SBS for review upon receipt in the contracting office. In all unrestricted requirements, the Small Business Review Form must be submitted and approved by the SBS and the PCR prior to an announcement of the acquisition in FedBizOpps. The SBS may recommend that the procurement be set-aside for one of the Small Business programs. The original of the completed review shall be placed in the contract file.

If the contracting officer rejects a recommendation of the SBS or PCR, written notice shall be provided to the D,OSBD, within 5 working days. The notice shall include complete information on the proposed acquisition, including its history, a copy of the SBS's review and the contracting officer's reason(s) for rejecting the recommendation. Disagreements between the CO and the D,OSBD, may be referred to the D,OSDBU and the bureau head unless a SBA appeal is filed by the SBA PCR. The PCR has appeal authority per FAR 19.505.

Bureaus may modify the Small Business Review form to include additional, bureau-specific information. The D, OSBD must approve any modified form, prior to its use by the bureau. The review must include, at a minimum, all of the elements in the Department's Small Business Review form.

The bureau SBS shall maintain a file of reviews conducted each fiscal year, with copies of the review, the requisition, pertinent statements of work, and lists of recommended sources. Reviews shall be numbered sequentially, and include a fiscal year designator (e.g., 02-1, 02-2, etc).

2. PCR Appeals

The contracting officer may reject the SBS or PCR recommendation for a set-aside. The PCR may concur with the CO's decision or appeal the case in accordance with the procedures in FAR 19.505. The appeal may be elevated to the level of the SBA Administrator and the Secretary of the Treasury. The Secretary's decision is final.

In order to conduct an effective review, the PCR may meet with contracting and/or technical personnel. Small business sources may be provided by the PCR and shall be included on the solicitation mailing list or be notified of the opportunity. If the PCR files an appeal on any procurement, the bureau SBS and/or CO shall promptly notify the D,OSBD.

C. Market Research

In accordance with FAR 10.001(a)(2)(ii) and (iii) and FAR 10.002(e) market research shall be completed prior to soliciting offers for simplified acquisitions or large contracts, and the results documented. The market research documentation shall be placed in the applicable simplified acquisition folder or contract file as a part of the permanent record.

Appendix 3-1
DEPARTMENT OF THE TREASURY
SMALL BUSINESS REVIEW FORM

(1) Requisition No.	(2) Date Received	(3) SBA Review No.
(4) Contract Specialist/Telephone Number		(5) Contracting Officer/Telephone Number
(6) Requisitioner Name/Telephone Number		(7) FPDS Product/Service Code
(8) Synopsis <input type="checkbox"/> Yes <input type="checkbox"/> No, Exc [FAR 5.202(a)]		(9) Small Business Size Standard <input type="checkbox"/> Employees <input type="checkbox"/> Avg. Annual Receipts
(10) NAICS Code	(11) Product/Service <input type="checkbox"/> is <input type="checkbox"/> is not on Class Set- Aside List (DTAR 1019)	(12) Estimated Dollar Value: This FY Total Contract Value
(13) Description of Product/Service		(14) Period of Performance Or Quantity Option Years: <input type="checkbox"/> No <input type="checkbox"/> Yes Number Option Quantity <input type="checkbox"/> No <input type="checkbox"/> Yes Number
(15) Proposed Procurement Method <input type="checkbox"/> 8(a) Sole Source or HUBZone Sole Source (Identify Name & Address of Proposed Contractor Below) _____ _____ <input type="checkbox"/> 8(a) Competitive <input type="checkbox"/> HUBZone Set-Aside (Competitive) 100% Small Business Set-Aside - NOTE: If NOT a HUBZone Set-Aside, document reasons on reverse.) <input type="checkbox"/> Partial Small Business Set-Aside _____% \$ _____ <input type="checkbox"/> Unrestricted (Check Appropriate Block in Item 16)		(16) Reason for Unrestricted Procurement <input type="checkbox"/> No reasonable expectation that offers will be obtained from at least two 8(a) (greater than \$3 million), HUBZone small or small business concerns offering the products of different small business concerns. <input type="checkbox"/> No reasonable expectation that award will be made at fair market price <input type="checkbox"/> Sole Source/Proprietary Item Justified in accordance with FAR 6.3 <input type="checkbox"/> Requirement not severable into two or more production runs or lots <input type="checkbox"/> Other: (Document on reverse)
(17) Source Check <input type="checkbox"/> SBA ProNet System <input type="checkbox"/> SB Capability Statements <input type="checkbox"/> Other:		(18) Small Business Concerns <input type="checkbox"/> Will <input type="checkbox"/> Will not be solicited (Explain on reverse)

(19) Prior Procurement History: Contract No _____ Award Date _____ Procurement Method _____ Contractor Name & Address: _____ Total Price _____ Contractor Size/Preference Status: _____ No. of Offerors _____ Large Business _____ Small Business _____ HUBZone Business _____ Remarks: _____
(20) Signature of Contract Specialist/Buyer: _____ Date: _____
Note: Any change in the procurement plan described here will require return for re-evaluation by the Small Business Specialist and SBA Representative.
(21) Small Business Specialist: <input type="checkbox"/> Accepts <input type="checkbox"/> Appeals (Recommendations on Reverse) Signature: _____ Date: _____
(22) SBA Representative: <input type="checkbox"/> Accepts <input type="checkbox"/> Appeals (Recommendations on Reverse) Signature: _____ Date: _____
(23) Contracting Officer: <input type="checkbox"/> Concurrs <input type="checkbox"/> Rejects (Recommendations on Reverse) Signature: _____ Date: _____
(24) Solicitation Number: _____ Date: _____

Appendix 3-1 Instructions

SMALL BUSINESS REVIEW FORM INSTRUCTIONS

<u>Item</u>	<u>Instructions</u>
(1)	Enter the requisition number.
(2)	Enter the date the requisition was received for processing by the bureau Small Business Specialist (SBS).
(3)	Small Business Specialist Use Only (SBS will enter SBS Review Number)
(4)	Enter the contract specialist's name and telephone number.
(5)	Enter the contracting officer's name and telephone number.
(6)	Enter the requisitioner's name and telephone number who can be contacted if further information is needed.
(7)	Enter the Federal Procurement Data System (FPDS) Product or Service code from the FPDS manual.
(8)	Indicate whether the requirement will or will not be synopsisized by checking YES or NO. If NO, specify the FAR exception.
(9)	Enter the correct small business size standard for the North American Industry Classification System (NAICS) code in Block 10, either number of employees or dollars of average annual receipts.
(10)	Enter the appropriate NAICS code from the NAICS manual.
(11)	Indicate whether the product or service is or is not on the Class Set-Aside List found in the DTAR Part 1019).
(12)	Enter the amount of money that is to be obligated for this purchase this fiscal year, and the anticipated value for the total contract period (including options).
(13)	Enter a brief description of purchase. The description should be clear, so that anyone not involved with the procurement will understand what is being bought.
(14)	Enter the initial (funded), period of performance or quantity. If the contract is expected to include option years or quantities, mark the "YES" blocks and enter the number of option years or the option quantity.
(15)	Enter a recommendation for the appropriate method of procurement. Reminder: HUBZone set-asides must be considered before traditional small business set-asides, even if they have historically been small business set-asides. If a traditional small business set-aside is recommended, documentation must be furnished on the reverse side of the small business review form that no HUBZone small business firms could meet the requirement.
(16)	If item 16 is marked "Unrestricted", enter the reason why a set-aside is inappropriate. Document specifics on the back of the form. Documentation should be very thorough as the Small Business Administration's Procurement Center Representative must concur with the determination.
(17)	Indicate all the resources that were used to identify potential sources.
(18)	Indicate whether small business firms will be solicited. If not, explain why on back of form.
(19)	If the item or service has been acquired before, enter the information requested from the most recent award.
(20)	The contract specialist should sign and indicate date signed here.
(21)	The bureau SBS will check the appropriate block and, if appropriate, enter the reasons for an appeal on the back of the form. The bureau SBS should then sign and indicate date signed here.
(22)	The SBA PCR, if available, will check the appropriate block and, if appropriate, enter the reasons for an appeal on the back of the form. The SBA PCR should then sign and indicate date signed here.
(23)	The contracting officer will check the appropriate block, and notify the D,OSBD in the event of a rejection. The contracting officer will sign and date here.
(24)	Enter the solicitation number and date of issuance here.

Appendix 3-2

**U.S. DEPARTMENT OF THE TREASURY
SMALL BUSINESS PROCUREMENT PROCEDURES
ORDER OF CONSIDERATION**

NOTE: This chart is a recommended order of consideration based on FAR Part 19 and guidance from the Small Business Administration. This information is applicable after the use of mandatory sources cited in FAR Part 8, and the consideration of pre-existing contract vehicles such as the GSA Federal Supply Schedule and Treasury-wide acquisition vehicles.

Dollar Amount	Category	Small Business Involvement
N/A	<p>Required Sources of Supplies and Services (see FAR Part 8):</p> <p><u>Supplies:</u></p> <ul style="list-style-type: none"> - agency inventories - excess from other agencies - Federal Prison Industries, Inc. - products available from the Committee for Purchase From People Who Are Blind or Severely Disabled - wholesale supply sources (see FAR 8.001) - mandatory Federal Supply Schedules - optional use Federal Supply Schedules - commercial sources 	<p>Optional use Federal Supply Schedules (see FAR 8.4 and www.fss.gsa.gov). When considering schedule contractors, place orders with the firm that can provide the supply or service representing the best value. <i>When conducting evaluations and before placing an order, consider including, if available, one or more small, HUBZone small, 8(a), small disadvantaged, women-owned small, veteran-owned small, and/or service disabled veteran-owned small business schedule contractors. Orders placed against the schedules may be counted toward the ordering agency's small business goals.</i></p> <p>Optional use Treasury-wide acquisition vehicles and government-wide acquisition contracts (see http://www.treas.gov/procurement/gwacpres.html). When considering these vehicles, consider small businesses (of all types) that can meet the acquisition objectives using the optional use Federal Supply Schedule guidelines at FAR 8.4.</p>

Dollar Amount	Category	Small Business Involvement
N/A	<p>Required Sources of Supplies and Services (see FAR Part 8):</p> <p><u>Services:</u></p> <ul style="list-style-type: none"> - services available from the Committee for Purchase From People Who Are Blind or Severely Disabled - mandatory Federal Supply Schedules - optional use Federal Supply Schedules - Federal Prison Industries, Inc. <p><u>Other Considerations (see FAR 8.002):</u></p> <ul style="list-style-type: none"> - public utility services - printing and related supplies - leased motor vehicles 	<p>Optional use Federal Supply Schedules (see FAR 8.4 and www.fss.gsa.gov). When considering schedule contractors, place orders with the firm that can provide the supply or service representing the best value. <i>When conducting evaluations and before placing an order, consider including, if available, one or more small, HUBZone small, 8(a), small disadvantaged, women-owned small, veteran-owned small, and/or service disabled veteran-owned small business schedule contractors. Orders placed against the schedules may be counted toward the ordering agency's small business goals.</i></p> <p>Optional use Treasury-wide acquisition vehicles and government-wide acquisition contracts (see http://www.treas.gov/procurement/gwacpres.html). When considering these vehicles, consider small businesses (of all types) that can meet the acquisition objectives using the optional use Federal Supply Schedule guidelines at FAR 8.4`</p>
\$0 - \$2,500	Micropurchases	Typically done via government purchase card; no small business preference; therefore, after consideration of mandatory sources, encourage small business participation by identifying qualified small business concerns that accept the purchase card

Dollar Amount	Category	Small Business Involvement
\$2,501 - \$25,000	Simplified Acquisition Procedures	<p>Typically not formally publicly advertised, reserved exclusively for small business participation of some kind:</p> <p>(1) 8(a) Program <u>or</u> (1) HUBZone Small Business Set-Aside Program (competitive) - reserved for HUBZone small businesses if HUBZone small business "rule of 2" is met (optional for procurements under \$100,000) (2) Small Business Set-Aside Program reserved for small businesses if small business "rule of 2" is met</p>
\$25,001 - \$50,000	Simplified Acquisition Procedures	<p>Typically publicly advertised (FedBizOpps except 8(a) sole source); reserved exclusively for small business participation of some kind:</p> <p>(1) 8(a) Program <u>or</u> (1) HUBZone Small Business Set-Aside Program (competitive) - reserved for HUBZone small businesses if HUBZone "rule of 2" is met (optional for procurements under \$100,000) (2) Small Business Set-Aside Program – reserved for small businesses if small business "rule of 2" is met (3) Waiver Note: Services Only, a FedBizOpps waiver is permitted when acquiring services by soliciting 5 small businesses for procurements over \$25,000 up to \$100,000; if available, this may include one small business, one small disadvantaged business, one women-owned small business, one HUBZone small business, and one service disabled veteran-owned small business).</p>

(Small Business Handbook, Chapter 3, Appendix 3-2, Revised September, 2004)

unt	Category	Small Business Involvement
\$50,001 - \$100,000	Simplified Acquisition Procedures	<p>Typically publicly advertised (FedBizOpps except 8(a) sole source), reserved exclusively for small business participation of some kind:</p> <p>(1) 8(a) Program <u>or</u> (1) HUBZone Small Business Set-Aside Program (competitive) - reserved for HUBZone small businesses if HUBZone "rule of 2" is met (optional for procurements under \$100,000)</p> <p>(2) Small Business Set-Aside Program – reserved for small businesses if small business "rule of 2" is met</p> <p>(3) Waiver Note: Services Only, a FedBizOpps waiver is permitted when acquiring services by soliciting 5 small businesses for procurements over \$25,000 up to \$100,000; if available, this may include one small business, one small disadvantaged business, one women-owned small business, one HUBZone small business, and one service disabled veteran-owned small business).</p>

Dollar Amount	Category	Small Business Involvement
\$100,001 - \$500,000	Formal Contracting Procedures or Simplified Acquisition Procedures for commercial purchases up to \$5,000,000	<p>Typically publicly advertised (FedBizOpps except 8(a) Sole Source) -</p> <p>(1) 8(a) Program [general rule of thumb: up to \$3,000,000 (\$5,000,000 for manufacturing), use 8(a) program on sole-source basis; over \$3,000,000 (\$5,000,000 for manufacturing), use 8(a) program on competitive basis if 8(a) "rule of 2" is met] <u>or</u></p> <p>(1) HUBZone Small Business Set-Aside Program (competitive) - reserved for HUBZone small businesses if HUBZone "rule of 2" is met <u>or</u></p> <p>(1) HUBZone Small Business Sole Source Program - reserved for a HUBZone small business if only one HUBZone small business can satisfy the requirement [threshold: up to \$3,000,000 (\$5,000,000 for manufacturing)]</p> <p>(2) Small Business Set-Aside Program – reserved for small businesses if small business "rule of 2" is met</p> <p>(3) Full and Open Competition (aka Unrestricted Competition) - if applicable, use price evaluation adjustment for small disadvantaged business concerns <u>and</u> price evaluation preference for HUBZone small business concerns</p>

Dollar Amount	Category	Small Business Involvement
\$500,000+	Formal Contracting Procedures or Simplified Acquisition Procedures for commercial purchases up to \$5,000,000	<p>Typically publicly advertised (FedBizOpps) -</p> <p>(1) 8(a) Program [general rule of thumb: up to \$3,000,000 (\$5,000,000 for manufacturing), use 8(a) program on sole-source basis; over \$3,000,000 (\$5,000,000 for manufacturing), use 8(a) program on competitive basis if 8(a) "rule of 2" is met] <u>or</u></p> <p>(1) HUBZone Small Business Set-Aside Program (competitive) - reserved for HUBZone small businesses if HUBZone "rule of 2" is met <u>or</u></p> <p>(1) HUBZone Small Business Sole Source Program - reserved for a HUBZone small business if only one HUBZone small business can satisfy the requirement [threshold: up to \$3,000,000 (\$5,000,000 for manufacturing)]</p> <p>(2) Small Business Set-Aside Program – reserved for small businesses if small business "rule of 2" is met</p> <p>(3) Full and Open Competition (aka Unrestricted Competition) - if applicable, use price evaluation adjustment for small disadvantaged business concerns; <u>and</u> small disadvantaged business participation program with evaluation factor or subfactor [for procurements expected to exceed \$500,000 (\$1,000,000 for construction)]; <u>and</u> price evaluation preference for HUBZone small business concerns; <u>and</u> consideration of the subcontracting plan as part of the solicitation evaluation criteria (see below)</p>
\$500,000+ (\$1,000,000+ for construction)	Subcontracting and Mentor-Protege Program	<p>Contracts awarded to large businesses (when subcontracting possibilities exist) must have subcontracting plan for small, HUBZone small, small disadvantaged, women-owned, veteran-owned small, and service disabled veteran-owned small business concern participation; mentor-protege agreements may also be considered (see DTAR 1019.202-70)</p>

Remember: "Acquisition planning, without small business consideration, is incomplete."

CHAPTER 4

CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION UNDER THE 8(a) PROGRAM

A. BACKGROUND

Executive Order 11625, October 13, 1971, paragraph 1 states, "The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy."

This philosophy expresses the basis for Federal programs supporting minority business enterprise, begun in 1969. At that time, Federal contracts were viewed as an effective means to stimulate the growth of the minority business community. Section 8(a) of the Small Business Investment Act of 1958 was determined to be an appropriate mechanism for awarding those contracts.

Section 8(a) authorized the SBA to enter into prime contracts with Federal agencies and to subcontract the performance of the contract to small business concerns or others. Executive Order No. 11458, signed by President Nixon on March 5, 1969, authorized the use of this provision to assist minority businesses, and established the "8(a) Program", as it is commonly called. That authority was later superseded by Executive Order No. 11625 of October 13, 1971.

Public Law (P.L.) 95-507, enacted in 1978, gave the 8(a) program statutory authority, more exacting eligibility criteria and a more clearly defined mission. Decision-making authority was vested solely in the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD). This did much to offset some of the problems which had beset the program in its early days--minority "front" companies, inconsistently applied standards, no centralized authority and few contract opportunities.

The Business Opportunity Development Reform Act of 1988, P.L. 100-656, has refocused the 8(a) program on its original business development objectives. The process for determining eligibility has been decentralized and simplified, the program participation term has been expanded to nine years and divided into a developmental stage and a transitional stage, more emphasis has been placed on business planning, participating concerns can no longer be dependent on sole-source contracts, and competition has been introduced for larger procurements. The changes enacted in P.L. 100-656 are a sweeping effort to ensure that 8(a) program participants develop the ability to compete in the open marketplace.

Several thousand small businesses, owned by socially and economically disadvantaged individuals, are participating in the 8(a) program. As 8(a) companies have developed proven performance records, the SBA has shifted its marketing emphasis from traditional service contracts to large dollar value, high technology research and manufacturing contracts, where the opportunities for long term business development are greater.

B. AUTHORITY AND IMPLEMENTATION

The 8(a) program is authorized by the Small Business Investment Act (15 U.S.C. § 637(a)), as amended. The Competition in Contracting Act (CICA) specifically excludes contracts awarded through the 8(a) program from the requirement for full and open competition. The laws are implemented through the SBA regulations, 13 CFR Part 124, and FAR Subpart 19.8. DTAR Subpart 1019.8 establishes Treasury policy for the 8(a) program.

C. IDENTIFYING PROCUREMENTS FOR THE 8(a) PROGRAM

1. Types of Suitable Procurements

All procurement opportunities, including those under the Simplified Acquisition Threshold, should be viewed as a possible candidate for the 8(a) program. 8(a) contractors are capable of performing virtually every type of manufacturing, service and construction contract. Each 8(a) participant is required to be listed in the SBA's Procurement Network (ProNet) database. By gaining familiarity with the capabilities of firms in the 8(a) program, it becomes a fairly straightforward matter to recommend use of 8(a) procedures.

There are no limitations on the type or size of 8(a) procurements. However, for procurements with service or construction NAICS codes, **competition** among eligible 8(a) concerns is required when the estimated value of the procurement, including all options, exceeds \$3 million (see 15 U.S.C. § 637(a)(1)(D)(i)(II) and FAR 19.805-1(a)(2)). For procurements with manufacturing NAICS codes, the threshold for competition is \$5 million. (*Id.*, see *also*, FAR 19.805-1). The criteria for 8(a) competitions are the same as for other set-aside programs; that is, a reasonable expectation of receiving offers from at least two eligible 8(a) concerns and making award at a fair market price, if the procurement will exceed the 8(a) competition threshold (see FAR 19.803(4)(ii) and 19.805-1(a)(1)). For indefinite quantity-indefinite delivery type contracts, the determination of whether the competition threshold is exceeded will be based on the **maximum** value of the procurement (including options) as required by FAR 19.805-1(a)(2). Additionally, 8(a) requirements should not be broken into lesser amounts to avoid the competitive threshold as required by also FAR 19.805-1(c).

A proposed 8(a) procurement should not have been publicly synopsisized as a small business set-aside and performed most recently by a small business (see FAR 19.804-3(a)(9); 13 C.F.R. 124.504(a)). The procurement should also not require excessive subcontracting to be performed by other than the prospective 8(a) contractor (see FAR 52.219-14), as required by FAR 19.811-3(e). (See, also, 13 C.F.R. 124.510).

2. Identifying Procurements

Proposed procurements suitable for the 8(a) program can be identified in a number of ways that include:

- The bureau SBS can recommend an 8(a) contract during the regular procurement review process or during review of advance procurement plans or contract forecasts.
- The cognizant bureau technical office can suggest use of the 8(a) program.
- An 8(a) contractor or contractors can market and identify the procurement.
- The SBA may request a particular requirement for the 8(a) program either through a direct recommendation by the PCR or by issuing a search letter.

3. Search Letter Procedures

A search letter is a written request from the SBA that a prospective procurement be set aside for the 8(a) program. The SBA has authority to certify to a procuring agency its competence to perform a particular requirement and negotiate a mutually agreeable contract (see FAR 19.803(a)). SBA also has authority to appeal if agreement cannot be reached with the contracting officer (see FAR 19.810).

Search letters may originate from any SBA level-district, regional or central office, and either recommend a particular 8(a) contractor as a source or request the procurement for 8(a) competition. As search letters certify SBA's competence to perform the stated requirement, they must be given full consideration. If the procuring agency determines that a proposed procurement should not be set aside for the 8(a) program, SBA may request reconsideration of the decision. However, to fall within the appeal criteria set forth in FAR 19.810, a SBA appeal must be signed by the SBA Administrator. A formal appeal will normally cite FAR 19.810 and must be received within specified timeframes. When a Treasury contracting officer, program office or SBS receives a search letter, the contracting officer should take the following action:

- Assess the suitability of the proposed procurement for the 8(a) program. For example, where state-of-the-art results are likely only through full and open competition, or where the procurement has traditionally been acquired from small business under set-aside procedures, an 8(a) set-aside may not be most advantageous to the Government. However, even if it is determined that the proposed procurement must be conducted using full and open competition, the 8(a) firm designated in the search letter should be given an opportunity to make a presentation as described below.
- Assess the status of the procurement. If the solicitation has not been issued, or has been issued as other than a small business set-aside, the contracting officer shall proceed with evaluation of the firm's capabilities. If the solicitation has been issued as a small business set-aside, the contracting officer shall telephone the SBA office that sent the search letter and advise them. (Usually SBA will not accept a procurement for the 8(a) program if it has been solicited as a small business set-aside. See FAR 19.804-3(a)(9); 13 C.F.R. 124.504(a)). If SBA wishes to pursue the procurement, the contracting officer shall proceed with the evaluation of the firm's capabilities. If not, the contracting officer shall send a written notice to SBA confirming the disposition of the search letter.
- Review the capabilities of the proposed 8(a) contractor(s). Typically, this is done through an oral marketing presentation by the company to appropriate program, technical and procurement personnel. This presentation should **not** be a full-scale proposal effort nor require the firm to incur bid and proposal costs. The presentation does not obligate the bureau to set aside the proposed procurement for the 8(a) program. Nevertheless, should deficiencies be apparent, the contracting officer should question the firm and give them an opportunity to respond. The contract file should be documented regarding any unresolved deficiencies.
- Determine that the 8(a) concern is qualified and the procurement is suitable. The contracting officer should then offer the procurement to SBA as an 8(a) set-aside and proceed with the procurement process. If the procurement has been previously synopsisized in FedBizOpps, the synopsis should either be canceled or amended, if a competitive 8(a) procurement will be conducted.

- Determine that the 8(a) firm is deficient, or the procurement is not appropriate for the 8(a) program. The contracting officer should send a letter to the SBA, to be coordinated with the SBS, providing the rationale for not setting aside the procurement. As backup, the contracting officer should provide the SBS a copy of the file documentation that details the technical review of the 8(a) concern's capabilities.
- If more than one search letter is received for a given procurement, the capabilities of each identified contractor should be assessed. The best-qualified contractor should be offered the procurement, or it should be offered for 8(a) competition, depending on the individual circumstances of the procurement.
- The SBA Administrator may appeal a negative decision to the bureau head or the Secretary of the Treasury. The SBA must notify the contracting officer that an appeal is forthcoming within 5 working days after SBA receives the contracting officer's decision (see FAR 19.810(b)).
- Upon notice of SBA's intent to appeal, the contracting officer must promptly notify the SBS, who shall notify the D,OSBD. (FAR 19.810(b) provides that the SBA will notify the D,OSBDU). The SBS should gather all correspondence and other pertinent information not provided previously to the SBS, who shall then provide all documentation to the D,OSBD. The SBA must file its written appeal to the bureau head or Secretary within 20 working days of their receipt of the adverse decision. Pending the decision on the appeal, the contracting officer shall suspend action on the procurement, unless a decision is made to override the suspension for urgent and compelling circumstances (see FAR 19.810(b)).
- Once the appeal is resolved, or if no appeal is received, and the proposed procurement is **not** set aside for the 8(a) program, the contracting officer must, at a minimum:
 - Include the 8(a) contractor on the solicitation mailing list, and
 - If the contract will require a subcontracting plan, forward a copy of the entire solicitation mailing list to the 8(a) contractor.

D. OFFERING PROCUREMENTS TO THE SBA

When a suitable procurement (over \$100,000) has been identified, the contracting officer offers it to the SBA for award under the 8(a) program as required by FAR 19.804-3. The required elements to be addressed are listed in FAR 19.804-3 and 13 C.F.R. 124.502. A sample-offering letter is shown at Appendix 5-1. The offering letter must state the applicable NAICS code and size standard for the procurement, and include a copy of the statement of work. The proposed procurement can be offered for the 8(a) program in general, on behalf of a specific 8(a) firm, or for 8(a) competition.

For single source requirements, other than construction, the offering letter should be sent to the SBA district office that services the nominated 8(a) firm. For single source construction requirements, the offering letter should be sent to the SBA district office where the work is to be performed. For competitive requirements, other than construction, the offering letter should be sent to the SBA district office servicing the geographical area in which the contracting office is located. All requirements for 8(a) construction competition should be forwarded to the SBA district office servicing the geographical area in which all or the major portion of the construction is to be performed.

1. General Offers for the 8(a) Program

If a proposed procurement below the threshold for competition is offered for the 8(a) program in general, the SBA will select the 8(a) contractor to perform based on the capabilities, approved level of contract support in the business plan, and compliance with the competitive business mix requirements, if applicable. The contractor must meet the procuring agency's technical needs, but the final contractor selection rests with the SBA. SBA will promote the equitable geographic distribution of 8(a) sole source contracts.

2. Offers for a Particular 8(a) Contractor

If an 8(a) contractor has performed identical or similar work previously, or has marketed its capabilities in a certain area, a proposed procurement can be offered to the SBA on behalf of that contractor. Prior to offering procurements in this way, the bureau SBS or contracting officer should contact the SBA field office where the company's business plan is administered to verify that the contractor is a small business in the NAICS code to be performed, has not exceeded its business plan support level and is in compliance with the competitive business mix targets. If a search letter has been received from the SBA, the offering letter should reference it.

3. Technical Competition

With the advent of price competition in the 8(a) program, SBA will no longer approve separate technical competitions for the purpose of identifying a single contractor with which to negotiate price. **UNDER NO CIRCUMSTANCES MAY A LIMITED TECHNICAL COMPETITION BE CONDUCTED FOR SOLE SOURCE PROCUREMENTS. CONTRACTING AND PROGRAM OFFICES SHALL NOT USE THIS TECHNIQUE.** However, informal technical presentations may be used to select an 8(a) firm for single source procurements under the \$3 million competitive threshold.

4. Informal Technical Presentations

When several companies of similar capabilities market a procurement, or if the contracting officer or bureau SBS is aware that multiple capabilities exist in the 8(a) market, or when different approaches for solving a problem are possible, the bureau may hold informal technical presentations to determine the best contractor for a particular procurement. An offering letter does not need to be sent to the SBA until the best contractor is identified.

Contracting officers may invite several 8(a) contractors (usually from three to seven) to give presentations on their capability to perform a specific procurement. The bureau shall not require the contractors to develop elaborate technical presentations or to otherwise incur bid and proposal costs at this stage. In order to enable the 8(a) concerns to focus their presentations, the contracting officer may develop a list of salient characteristics and/or necessary expertise to perform the procurement. This list may be given to each of the invited contractors, with a statement that the list is not inclusive and is not the statement of work (SOW). **DO NOT GIVE THE SOW TO VENDORS TO HELP THEM PREPARE FOR THESE PRESENTATIONS.** If the SOW is issued, SBA will consider that the procuring agency has initiated a competitive procurement (see 13 C.F.R. 124.503(e)(2)).

The CO, and if possible, the SBS, shall attend the presentations with the program office staff. The CO or SBS shall make clear to all in attendance that the presentation is a marketing effort and **not** a commitment to offer a contract. No cost information may be solicited. After listening to the presentation, appropriate questions about the contractor's capabilities may be asked. Based on the informal technical presentations, bureau procurement, small business, and program personnel should select one 8(a) contractor with which to continue the acquisition process. An offering letter should be submitted to SBA on behalf of that concern (see 2. above).

5. Offers for Competitive Procurements

For procurements which exceed the threshold for competition, the offering letter should include the identity of any geographic conditions which are important for contract performance and list the names of 8(a) contractors, if any, which have already expressed an interest in the procurement. Additionally, identify any search letters that have been sent for that procurement. For a complete listing of the remaining elements to be included in the offering letter, refer to FAR 19.804-3 and 13 C.F.R. 124.502(c).

6. SBA Response

SBA will evaluate the offer and within 5 working days from receipt of the offer, either accept or reject the proposed procurement is eligible for award (see 13 C.F.R. 124.507(b)(1)). Prior to accepting the offer, SBA will determine whether this would have an adverse impact on another small business. An adverse impact is generally considered to exist if the contract is currently being performed by a small business (not in the 8(a) program) and accounts for 25% or more of that concern's annual receipts (see 13 C.F.R. 124.504(c)(1)(i)(c)).

If below the threshold for competition, the acceptance letter will also identify the contractor selected to perform the procurement. In most cases, SBA will authorize the procuring agency to conduct negotiations directly with that contractor (see, 13 C.F.R. 124.506(c)).

For competitive procurements, the acceptance letter will advise whether the competition is limited geographically or further limited to participants in the developmental stage or the transitional stage of program participation.

E. SYNOPSIS

Single-source solicitations that are to be awarded using Section 8(a) procedures do not require synopsis in FedBizOpps. Competitive solicitations must be synopsized in FedBizOpps, using the format prescribed in FAR Subpart 5.205(f). All 8(a) contract **awards**, whether single source or competitive, must be synopsized in FedBizOpps.

F. SINGLE SOURCE 8(a) CONTRACTS

The Department of the Treasury entered into a Memorandum of Understanding (MOU) with the Small Business Administration (SBA) in May of 1998 to streamline the 8(a) acquisition process. The SBA has delegated their authority to execute the final contractual document 8(a) acquisitions. Detailed procedures are outlined below.

1. Single Source Acquisitions (under \$100,000)

For single source acquisitions under the Simplified Acquisition Threshold (\$100,000), the contract specialist must select an 8(a) firm and then verify that the 8(a) is still in the 8(a) program by printing out the company's profile from the SBA's ProNet database located at <http://pro-net.sba.gov>. The profile must be included in the Purchase Order documentation. An offering/acceptance letter is not required for simplified acquisitions. The contract specialist must use the procedures outlined in Part 13 of the FAR (commercial item test program acquisitions over \$100,000 are not eligible for this program). The contract specialist then writes a purchase order and includes the clause at DTAR 1052.219-72, Section 8(a) Direct Awards (May 1998) in the order. The Contracting Officer then signs the purchase order. Once signed, the contract specialist must send a copy of the purchase order to the SBA district office in which the 8(a) is headquartered. The purchase order should be faxed or sent by electronic methods and be addressed to the Business Opportunity Specialist (BOS) responsible for the business plan of the 8(a) vendor. The SBA then has two working days to determine the eligibility of the 8(a) firm awarded the purchase order (see 13 C.F.R. 124.503(a)). The 8(a) firm must not start work on the order until after the two day period has passed. If the contract specialist does not hear back from the SBA office within the two working day period, the 8(a) firm is deemed eligible and the 8(a) firm may begin work to complete the tasks required by the purchase order.

2. Single Source Solicitations (over \$100,000)

Under the MOU procedures, an offering letter must be sent to the appropriate SBA office (see Section D above). The SBA has five working days to respond to the offering letter with an acceptance letter. If the SBA does not respond within five working days, the contract specialist must contact the SBA office immediately. An acceptance letter must be received from SBA prior to proceeding with the 8(a) acquisition.

Once an acceptance letter has been received, the contract specialist may proceed with requesting a proposal from the 8(a) company. The contract specialist may use any method for this request including the use of an RFP, if necessary. In any event, the 8(a) contractor should be given a complete copy of a SOW, Section B pricing information, and the representations and certifications required for completion prior to award. The contracting officer should allow a reasonable amount of time for the contractor to submit technical and cost proposals, although it is not a requirement to hold the solicitation open for 30 days.

Because the 8(a) single source contract is a non-competitive, negotiated instrument, the contracting officer and technical representative have considerable latitude to discuss, and if necessary, to refine the statement of work during the negotiation process. Discussions should verify that the contractor fully understands the work to be performed, especially when negotiating the contractor's first contract with a particular agency. Once technical and price negotiations have been completed, the contracting officer must determine that the contract will not exceed a fair market price as required by FAR 19.807.

The contract specialist then prepares the contractual document, either using an SF33, SF26, SF1442, or SF1449 (in this case, the dollar amount of the contract must not exceed the single source threshold of \$3,000,000 for services and \$5,000,000 for manufacturing). The contractual document must contain the clause at DTAR 1052.219-72, Section 8(a) Direct Awards (May 1998). Both the 8(a) vendor and the Contracting Officer should then sign the contractual document. Once the contract has been executed, a copy of the document should be forwarded to the appropriate SBA office within five days.

G. COMPETITIVE 8(a) CONTRACTS

The MOU between the Department of the Treasury and the SBA, signed in May of 1998, also applies to competitive 8(a) acquisitions. Detailed procedures are outlined below.

1. Offering Letter

An offering letter must be sent to the appropriate SBA office as outlined in Section D above. The SBA has five working days to respond to the offering letter with an acceptance letter. If the SBA does not respond within five working days, the contract specialist must contact the SBA office immediately. An acceptance letter must be received from SBA prior to proceeding with the 8(a) acquisition.

2. Establishing Competitive 8(a) Source Lists

For competitive 8(a) procurements, the acquisition is synopsisized in FedBizOpps. The 8(a) contractors who request a copy of the solicitation, plus any other qualified contractors known to the bureau SBS or contracting officer, will constitute the list of concerns to receive the solicitation.

3. Competitive 8(a) Solicitations

Competitive 8(a) acquisitions may be conducted using either sealed bids or competitive proposals. The same criteria for selecting the method of solicitation (sealed bid vs. competitive proposals) apply as for other competitive contracts. The solicitation package for a competitive 8(a) solicitation should not differ from that required for any other competitive procurement. The solicitation shall include a complete statement of work, detailed evaluation factors for award, and the clause at DTAR 1052.219-72, Section 8(a) Direct Awards (May 1998). The solicitation shall also include the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with an Alternate III (Deviation), which can be found in the DTAR at 52.219-18.

The date of the 8(a) Offeror's written self-certification as a small business, submitted with its initial offer including price, will be the date used by SBA to determine the concern's eligibility to receive the particular contract. Therefore, it is particularly important to obtain a complete set of representations and certifications from each 8(a) offeror.

4. Evaluation of Competitive 8(a) Offers

Offers from 8(a) concerns are evaluated in accordance with the evaluation factors listed in the solicitation. Evaluations shall proceed as they would for any competitive solicitation, whether sealed bid or competitive proposals.

The General Accounting Office has held that it has jurisdiction to hear and decide protests of solicitation content and evaluation procedures used for competitive 8(a) procurements. See, *Morrison Construction Services, Inc.*, 70 Comp. Gen. 139 (1990), 90-2 CPD ¶ 499. Therefore, the contracting officer must use the same care to safeguard information and evaluate 8(a) offers as is required for other competitive procurements.

5. Negotiating the Competitive 8(a) Contract

Agency contracting officers are responsible for conducting all negotiations necessary for determining an apparent successful offeror on solicitations requiring competitive proposals. The SBA contracting officer is not usually involved in these negotiations.

6. Eligibility Determinations for Competitive Procurements

Following receipt of bids (in the case of sealed bidding), for competitive 8(a) acquisitions over \$100,000, the contracting officer shall submit the name, address, and telephone number of the apparent low bidder to the appropriate SBA BOS at the field office servicing the identified 8(a) firm. If the apparent low bidder is determined to be ineligible, the contracting officer shall submit information on the next apparent low bidder to the cognizant SBA field office. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. In the case of a negotiated procurement, following receipt of initial offers, including price, and within two working days after a request from the Contracting Officer, the SBA shall issue an eligibility determination for all firms in the competitive range, if discussions are to be conducted. The SBA will issue an eligibility determination for all firms with a realistic chance of award within two working days after a request from the Contracting Officer, if no discussions are to be conducted.

7. Preparing the Competitive 8(a) Contract Documents

The competitive 8(a) contract documents are prepared in the same way as Single Source 8(a) contract documents (see Paragraph F.2 above).

H. WITHDRAWAL OR MODIFICATION OF 8(a) SET-ASIDES

An individual 8(a) set-aside may be withdrawn or modified before award if the contracting officer determines that award would not be in the public interest (because of unreasonable price, for example) (see FAR 19.806). A copy of the contracting officer's written determination to withdraw or modify a set-aside must be forwarded through the bureau SBS and the PCR to the D,OSBD or designee for approval prior to proceeding with the procurement. After the D,OSBD's or designee's approval, the contracting officer must notify the SBA of its intention to withdraw the requirement from the 8(a) program. SBA has the right to appeal the withdrawal, particularly if it is based on price or price-related issues.

If the D,OSBD or designee disagrees with the contracting officer, the matter may be referred to the D,OSDBU and the head of the contracting activity (the bureau head). The decision of the D, OSDBU is final. If no award can be made, the set-aside is automatically dissolved.

I. POST-AWARD ACTIONS

1. Coordination with the SBA and the Treasury D,OSBD

Careful evaluation of the contractor's capabilities prior to award ensures that 8(a) contracts are performed successfully. In the event of performance problems, corrective action should be discussed with the 8(a) contractor first (see FAR 19.812(c)). Should the 8(a) contractor fail to take appropriate corrective action, the contracting officer must first advise SBA in writing before terminating the contract for default (see 13 C.F.R. 124518(a)). Substitution of another 8(a) in lieu of termination for default should be discussed as required by 13 C.F.R. 124.518(c). Any significant performance problems under an 8(a) contract should be reported immediately by the contracting officer to the bureau SBS and the D,OSBD.

In the event an 8(a) contract must be terminated for convenience, the contracting officer must first notify the SBA in writing prior to terminating the contract as required by 13 C.F.R. 124.518(b). In the event ownership of the 8(a) concern is transferred or otherwise relinquished during the course of a contract, the contract must be terminated for convenience as required by 15 U.S.C. § 637(a)(21) and FAR 19.812(d).

The contracting officer must not initiate termination proceedings, either for default or for the convenience of the Government, without first informing the bureau SBS, D,OSBD and the SBA contracting officer.

2. Approval of Lower Tier Subcontracting

The bureau contracting officer must ensure that all contracts comply with the work performance requirements, in accordance with FAR 19.508(e). This requirement is in addition to the overall limitations on subcontracting required for set-aside contracts (see FAR 52.219-14). The bureau contracting officer should not approve a proposed subcontracting arrangement if:

- The proposed subcontractor is suspended, debarred, or determined ineligible by any Federal agency;
- The subcontractor would control performance of the procurement;
- The subcontract is not an arms length agreement; or
- The subcontract is an attempt to circumvent the size regulations.

3. Contract Modifications

Contract modifications are negotiated between the contracting agency and the 8(a) firm. In general, unilateral modifications, such as a change in the Contracting Officer's Technical Representative, may be issued without the signature of the 8(a) firm. A copy of the modification should be sent to SBA within five days.

A modification within the scope of the initial contract may be issued whether the contractor has exited the 8(a) program or whether the concern is no longer small under the size standard for the contract.

A modification outside the scope of the initial 8(a) contract is a breach of contract by the Government. Therefore, if a modification is contemplated that appears to be beyond the scope of the original 8(a) contract, the new requirement should be treated as a new procurement. If the 8(a) contractor is still a program participant and still a small business, the new requirement may be issued as a single source as long as the estimated price falls below the applicable threshold for competition. If the estimated price exceeds the threshold for competition, the requirement must be competed among eligible 8(a) concerns.

4. Delivery Orders

It is the responsibility of the 8(a) contracting officer to monitor delivery orders against indefinite quantity-indefinite delivery contracts to ensure that the 8(a) firm is not subcontracting work beyond the established limitations as required by 13 C.F.R. 124.510. The contracting officer should also track delivery orders to help ensure that the 8(a) firm is not subcontracting work beyond the established limitations. A copy of each delivery order should be forwarded to the appropriate SBA office within five days of execution.

5. Exercising Options

Priced options under 8(a) contracts are exercised in the same manner as any contract option, except that a copy of the modification should be forwarded to the SBA office that administers the contract.

Priced options may be exercised even if the 8(a) contractor has exited the 8(a) program or is no longer a small business under the size standard which applies to the contract. As with any other contract, un-priced options are not allowed.

6. Contract Close-out

A copy of the acceptance document and a copy of the final payment document shall be provided to SBA.

Appendix 4-1

Sample Offering Letter

U.S. Small Business Administration
Attn: Business Opportunity Specialist (Insert Name)
Address
City, State, Zip

Via Facsimile:

Dear _____:

The Department of the Treasury, (name of bureau) , has a new/continuing requirement for (description of product or service). A copy of the Statement of Work is enclosed. The following is furnished for your information:

1. A description of the work to be performed or items to be delivered.
2. The estimated performance period is (length of time plus X options) commencing (anticipated date of award).
3. The contracting officer has determined that the North American Industry Classification System code for this procurement is , with a small business size standard of .
4. The anticipated dollar value of the requirement is (including options, if any)
5. The following special restrictions or geographical limitations apply (for construction include the location of the work to be performed):
6. The following special capabilities or disciplines are required:
7. A type of contract is contemplated.
8. The acquisition history is (if any, include the names and addresses of any small business contractors which have performed this requirement during the previous 24 months):
9. Public solicitation for this procurement (has/has not) been issued to the small business community as a HUBZone or small business set-aside.
10. We are offering this as an open requirement and are therefore not providing a source recommendation or a justification for such a recommendation. **(OR SEE BELOW)**
11. Bonding requirements (if applicable) are .
12. The following 8(a) concerns, including HUBZone 8(a) concerns, have expressed an interest in this specific requirement as a result of self-marketing, response to sources sought, or publication of advanced acquisition requirements:
13. The following SBA field offices have asked for this acquisition under the 8(a) program (i.e., through search letters, etc.):

SAMPLE OFFERING LETTER (continued)

14. I/We recommend that the acquisition should be (competitive/sole source).

15. The following other pertinent data is included:

We request that this acquisition be processed using the Memorandum of Understanding (MOU) procedures, dated May 1998, between SBA and the Department of the Treasury. Please advise this office within 5 calendar days that you have accepted the requirement, by issuance of an acceptance letter, or return the requirement for competitive procurement.

Sincerely,

Contracting Officer

Enclosure:
Statement of Work

Sample Substitute Wording for Item 10.

a. Requirements submitted on behalf of an individual concern:

"10. We have nominated XYZ Corporation as the 8(a) contractor to perform this requirement because the company, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program."

OR

"10. We have nominated XYZ Corporation as the 8(a) contractor to perform this requirement because the acquisition is a follow-on and the nominated concern is the incumbent.≡

OR

"10. We have submitted this requirement on behalf of XYZ as the result of a SBA search letter dated _____, copy attached, and our subsequent review of XYZ's capabilities."

b. Requirements offered for competition:

"10. We are offering this requirement for competition under the 8(a) program. Please advise us as soon as possible of any program term restrictions you wish to place on the potential competitors."

OR

"10. We are offering this requirement for competition under the 8(a) program. Please advise us as soon as possible of any further geographic restrictions you wish to place on the potential competitors, and provide a listing of no more than 25 potential competitors to receive the solicitation.

CHAPTER 5

HUBZone SMALL BUSINESS PROGRAM

A. BACKGROUND

The Historically Underutilized Business Zone (HUBZone) Act of 1997 created the HUBZone Program. The purpose of the HUBZone program is to provide federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas. Treasury implemented this program on October 1, 2000.

B. DEFINITION

A HUBZone is an economically distressed area located in a qualified census tract, non-metropolitan county, or Indian reservation. In consultation with other agencies, the Small Business Administration (SBA) uses a formula based on median household income or unemployment rates. Areas that meet the requirements are designated as HUBZones. In order to participate in the HUBZone program, a small business concern must be certified as such by the SBA. To meet the requirements for HUBZone participation, a qualified firm must be small; owned by a U.S. citizen(s); whose principal office is located in a HUBZone; have at least 35% of its employees residing in a HUBZone; and certify that it will attempt to maintain this percentage during the performance of any HUBZone contract it receives.

C. IMPLEMENTATION

There are three contracting implementation elements for the HUBZone program.

1. HUBZone Set-Aside Procedures

The Contracting Officer shall set-aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns when the Contracting Officer has a reasonable expectation that offers will be received from two or more HUBZone small business concerns, and award will be made at a fair market price (known as the HUBZone Rule of Two).

The Contracting Officer may set-aside acquisitions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns at the sole discretion of the Contracting Officer, provided the HUBZone Rule of Two above is met.

2. HUBZone Sole Source Awards

The Contracting Officer may award contracts to HUBZone small business concerns on a sole source basis provided that: (a) only one HUBZone small business concern can satisfy the requirement, (b) the anticipated price of the contract, will not exceed \$3,000,000 for a service requirement including construction (\$5,000,000 for a manufacturing requirement), (c) the requirement is not currently being performed by a non-HUBZone small business concern, (d) the acquisition is greater than the simplified acquisition threshold, (e) the HUBZone small business concern has been determined to be a responsible contractor with respect to performance, and (f) award can be made at a fair and reasonable price.

3. Price Evaluation Preference for HUBZone Small Business Concerns

The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used: (a) in acquisitions expected to be less than or equal to the simplified acquisition threshold, (b) where price is not a selection factor (i.e., architectural-engineering services), and (c) where all fair and reasonable offers are accepted (i.e., the award of multiple award schedule contracts).

The price evaluation preference gives offers from HUBZone small business concerns a preference by adding a factor of 10% to all offers, except: (a) offers from HUBZone small business concerns that have not waived the evaluation preference, (b) otherwise successful offers from small business concerns, (c) otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in FAR 25.403, and (d) otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government. According to SBA's HUBZone office, otherwise successful offer is defined as the apparent low bidder or apparent successful offeror.

An example of the use of the price evaluation preference is detailed below:

	Price Without Adjustment	With Adjustment
Firm A (Large Bus.)	\$590,000	\$649,000
Firm B (Small Bus.)	\$595,000	\$654,500
Firm C (HUBZone)	\$600,000	\$600,000

A concern that is both a HUBZone small business concern and a Small Disadvantaged business concern shall receive the benefit of both the HUBZone small business price evaluation preference and the Small Disadvantaged Business price evaluation adjustment (see FAR 19.11). Each applicable price evaluation preference or adjustment shall be calculated independently against an offerors base offer. These individual preference and adjustment amounts shall both be added to the base offer to arrive at the total evaluated price for that offer.

D. STRATEGY

According to SBA Procedural Notice 8000-553, the 8(a) program and the HUBZone small business program have "parity"; that is, the contracting officer has the discretion to use either program, depending on the procuring activity's achievement of their goals and other pertinent factors. Additionally, this notice retains the requirement that HUBZone set-asides take priority over small business set-asides (see Chapter 6). Further, SBA's website provides the following critical question/answer sequence regarding procurements that have been historically set aside for small business concerns:

Question: Do I have to set-aside requirements exceeding \$100,000 for the HUBZone program that my agency has historically set-aside for small business?

Answer: Yes. FAR 19.1305(a) says that contracting officers shall set-aside acquisitions exceeding the "Simplified Acquisition Threshold" when there is a reasonable expectation that two or more qualified HUBZone small business concerns will compete for the requirement and that the requirement can be obtained at a "fair and reasonable" price.

Finally, two key questions and answers from 13 CFR 126.605 and 126.606 reveal the following:

Question: What requirements are not available for HUBZone contracts?

Answer (from 13 CFR 126.605): A contracting activity may not make a requirement available for a HUBZone contract if: (a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 et seq., as amended; or (b) An 8(a) participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) program, unless SBA has consented to release of the requirement from the section 8(a) program; or (c) The requirement is at or below the micropurchase threshold.

Question: May a contracting officer request that SBA release an 8(a) requirement for award as a HUBZone contract?

Answer (from 13 CFR 126.606): Yes. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant(s) can perform the requirement, and where the section 8(a) program will not be adversely affected.

Therefore, we can make the following conclusions:

- 1) The contracting officer may use the 8(a) or the HUBZone program, depending on agency goals or other pertinent factors. If a procurement is currently in the 8(a) program, a HUBZone contract is not appropriate for the follow-up effort, in most cases, unless SBA has released the requirement from the 8(a) program.
- 2) For procurements not being done under 8(a) procedures, the contracting officer must consider the HUBZone program (for procurements expected to exceed \$100,000) prior to small business set-asides, even if the project has been historically set aside for small businesses. HUBZone set-asides are left to the discretion of the contracting officer for procurements under \$100,000.

Based on these considerations, we can develop the following strategy:

- 1) Historical small business set-asides shall be reviewed first for HUBZone set-asides.
- 2) Continue to work with GSA to receive agency credit when using HUBZone vendors under GSA schedule contracts.
- 3) Consider using HUBZone set-aside procedures below the Simplified Acquisition Threshold (SAT) when rule of two is met (CO's discretion).
- 4) Use HUBZone sole source above the SAT up to \$3 million for supplies/services and \$5 million for manufacturing.
- 5) When utilizing the synopsis waiver program consider using a HUBZone vendor as one of the five small businesses you solicit (PIM 02-03).
- 6) Meet periodically with the Association for HUBZone Contractors to exchange information, ideas, success stories, etc.
- 7) Promote the use of SBA's HUBZone website at www.sba.gov/hubzone for market research and program verification.
- 8) Insert the HUBZone small business Price Evaluation Preference (PEP) clause in full and open solicitations over the SAT.

- 9) Develop a HUBZone recognition award as part of the annual Treasury small business awards program.
- 10) Consult with the SBA Procurement Center Representative as needed for HUBZone market research.
- 11) Continue to accept HUBZone small businesses into Treasury's Mentor-Protégé Program and consider the existence of a Treasury Mentor-Protégé Agreement (DTAR 1019.202-70) in unrestricted actions over \$500,000.
- 12) Continue to make the subcontracting plan a factor or subfactor in the evaluation criteria (FAR 19.7 and DTAR 1019.7) to include HUBZone small business participation.

CHAPTER 6

SMALL BUSINESS SET-ASIDES

A. BACKGROUND

In the Small Business Act of 1958 (15 U.S.C. § 637), as amended, the Congress declared that small businesses should receive a fair proportion of the Government's purchases and contracts for property, services and construction. Section 15 of the Act (15 U.S.C. § 644) established the statutory authority for procurement set-asides to accomplish this policy.

B. SMALL BUSINESS SET-ASIDES

1. Criteria

All procurements over \$2,500 and less than the simplified acquisition threshold are automatically reserved exclusively for small business concerns and shall be set-aside for small businesses unless the contracting officer determines there is not a reasonable expectation of obtaining offers that are competitive in terms of market prices, quality, and delivery. This statutory small business reservation does not preclude the award of an 8(a) contract or HUBZone set-aside procurement. Therefore, procurements in this dollar range are reserved exclusively for small business participation of some kind unless the contracting officer makes a determination to the contrary.

A procurement over the simplified acquisition threshold shall be conducted as a small business set-aside whenever the contracting officer determines that there is a reasonable expectation of receiving at least two offers from responsible small business concerns that are competitive in terms of market price, quality, and delivery. This is commonly known as the "Rule of Two" (see FAR 19.502-2). A small business set-aside should only be considered once either an 8(a) or HUBZone set-aside has been considered and determined to not be viable for a particular procurement.

CHAPTER 7

VETERAN-OWNED and SERVICE DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM

A. BACKGROUND

The Veterans Entrepreneurship and Small Business Development Act of 1999 (Public Law 106-50) established a government-wide service disabled veteran-owned small business goal of 3% for prime contracts and subcontracts. Additionally, although a goal was not mandated for veteran-owned small businesses, the federal government is required to accurately measure the extent of participation by veteran-owned small businesses in government acquisitions in terms of the total value of contracts placed during each fiscal year (see FAR 4.6). Therefore, as is the case with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, it is the policy of the federal government to provide maximum practicable opportunities in its acquisitions to veteran-owned and service disabled veteran-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance.

B. DEFINITIONS

1. Veteran-Owned Small Business (VOSB) Concern means a small business concern (a) not less than 51% 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% of the stock of which is owned by one or more veterans; and (b) the management and daily business operations of which are controlled by one or more veterans.
2. Service Disabled Veteran-Owned Small Business (SDVOSB) Concern means a small business concern (a) not less than 51% of which is owned by one or more service disabled veterans or in the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more service disabled veterans; and (b) the management and daily business operations of which are controlled by one or more service disabled veterans or, in the case of a 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).

C. IMPLEMENTATION

It is the policy of the Department of the Treasury to include VOSBs and SDVOSBs in all phases of the acquisition process, including, but not limited to, outreach, inclusion on solicitation mailing lists, and targeted analysis efforts based on Treasury's historical purchases.

D. STRATEGY

Although there is no SDVOSB or VOSB set-aside, we can develop a strategy to promote the utilization of SDVOSBs or VOSBs in our procurement program:

- 1) Outreach – host a SDVOSB/VOSB event each November (in honor of the Veterans Day Holiday); work with Veteran Affairs and SBA.
- 2) Meet periodically with the Association for Service Disabled Veterans to exchange information, ideas, success stories, etc.
- 3) Introduce/refer SDVOSBs/VOSB to other programs in which they qualify/have an interest [8(a), HUBZone, etc.]
- 4) Provide proactive inclusion/encouragement to SDVOSBs/VOSBs on small business set-aside acquisitions.
- 5) Appoint a SDVOSB/VOSB Coordinator in the Treasury OSBD.
- 6) Continue to promote SDVOSB/VOSB participation in Treasury's Mentor-Protégé program.
- 7) Continue to promote SDVOSB/VOSB participation in Treasury's subcontracting program by making the subcontracting plan part of the evaluation criteria on major projects.
- 8) Actively seek SDVOSBs/VOSBs from GSA's Federal Supply Schedule (pending universal inclusion of the SDVOSB/VOSB category on the GSA website and Federal Procurement Data System internal database).
- 9) Promote the use of all available SDVOSB/VOSB databases for market research and inclusion/consideration.
- 10) Expand Treasury's waiver synopsis for small business set-asides (PIM #02-03; procurements for services over \$25,000 up to \$100,000) by soliciting 5 firms to include, if available, at least: 1 SDB; 1 WOSB; 1 HUBZSB; and 1 SDVOSB/VOSB.

CHAPTER 8

WOMEN-OWNED SMALL BUSINESS PROGRAM

Reserved for Future Use

CHAPTER 9

SUBCONTRACTING WITH SMALL BUSINESS, HUBZONE SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS, WOMEN-OWNED SMALL BUSINESS, SERVICE DISABLED VETERAN-OWNED SMALL BUSINESS and VETERAN-OWNED SMALL BUSINESS CONCERNS

A. BACKGROUND

Title 15 U.S.C. § 637 states:

It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

In 1961, Congress required all contracts over certain dollar thresholds not awarded to small businesses to provide that contractors should develop and implement small business subcontracting programs. Dissatisfaction with agency implementation and enforcement of these programs led Congress, in 1978, to establish more stringent requirements for subcontracting in Section 8(d) of the Small Business Act, through enactment of PL 95-507.

FAR Subpart 19.7 implements the subcontracting programs. Some of the salient requirements include:

- Every contractor, in contracts exceeding \$100,000, must contain a clause whereby the contractor agrees to subcontract with small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small businesses to the maximum extent practicable consistent with the efficient performance of the contract (see 15 U.S.C. § 637). This does not apply to small business contracts which will be performed entirely outside any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or which are for personal services. This clause may be found at FAR 52.219-8. The prescription for this clause may be found at FAR 19.708.
- Each contractor other than a small business, on negotiated contracts which are expected to exceed \$500,000, or \$1,000,000 for construction, must have an approved subcontracting plan for the particular contract prior to award.
- Failure of any contractor or subcontractor to comply with any aspect of the subcontracting plan shall be a **material breach** of the contract or subcontract. See 15 U.S.C. § 637(d)(8) and FAR 52.219-9(i). See, also, 15 U.S.C. § 637(d)(5)(B) (material part of contract).
- Prior compliance with such subcontracting plans shall be considered in determining the **responsibility** of the offeror. See 15 U.S.C. § 637(d)(5)(b) and FAR 19.705-5(a)(1).

Continued Congressional dissatisfaction with subcontracting program progress led to the establishment, in PL 100-656, codified at 15 U.S.C. § 637(d)(4)(F), which provides for the assessment of **liquidated damages** requirements for contractors who fail to make a **good faith effort** to carry out the provisions of their subcontracting plans (see FAR 19.705-7).

The Historically Underutilized Business Zone (HUBZone) Act of 1997 added subcontract plan requirements for HUBZone small business concerns.

The Veterans Entrepreneurship and Small Business Development Act of 1999, P.L. 106-50, 113 Stat. 233 (1999), amended the Small Business Act to include service disabled veterans. In addition, FAR requires a veteran-owned small business subcontracting goal. Therefore, each subcontracting plan must have goals for small businesses, of all types, small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small businesses.

Prime contractors must pay their small business subcontractors in a timely manner "pursuant to the terms of their subcontracts," as required by 15 U.S.C. § 637(d)(1).

B. TREASURY POLICY AND RESPONSIBILITY

Congress has unequivocally stated that it is the policy of the United States – including the Department of the Treasury -- that small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small and service disabled veteran-owned small businesses shall have the **maximum practicable opportunity** to compete for, and receive, subcontract awards (see 15 U.S.C. § 637(d)(1))

This policy requires action by:

- Contracting officers, to request and obtain plans for applicable contracts, to negotiate plans that demonstrate the prime contractor's best efforts to subcontract with small business (SB), HUBZone small business (HUBZONE), small disadvantaged business (SDB), women-owned small business (WOB), veteran-owned small business (VOSB), and service disabled veteran-owned small business (SDVOSB) to the maximum extent practicable, and to actively monitor the prime contractor's progress in carrying out its plan;
- SBSs, to assist the contracting officer in evaluating and negotiating acceptable plans, obtain necessary advice and assistance from the SBA and Defense Contract Management Command (DCMC) subcontracting specialists, coordinate approvals with the SBA PCR and the D,OSBD (if applicable), and monitor contractors' performance through collection and analysis of required reports;
- D,OSBD, to develop appropriate subcontracting program policy and ensure its consistent application throughout the Department of the Treasury; and
- Prime contractors, to develop and submit subcontracting plans which contain aggressive goals, show their good faith efforts to award subcontracts to SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns, and submit accurate, timely and complete reports of their subcontracting activity.

C. TYPES OF SUBCONTRACTING PLANS

1. Individual Plans

An individual subcontracting plan contains separate dollar and percentage subcontracting goals with all administrative elements developed for the specific contract. Each item of the plan must be negotiated and approved by the contracting officer prior to award. The plan applies to the contract for its entire life (see FAR 52.219-9).

2. Master Plans with Individual Contract Goals

A master subcontracting plan contains the repetitive policy and administrative information required for subcontracting plans (see FAR 19.704(b)). Contractors may establish master plans on a plant or division-wide basis. The master plan shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans.

The master plan does not include goals; therefore, when a prime contractor presents it, the contracting officer must negotiate separate dollar and percentage goals for SB, HUBZone, SDB, WOB, VOSB, and SDVOSB participation. A listing of the items and services to be subcontracted under the plan; and descriptions of the method used to develop the goals, to develop subcontracting source lists and to allocate overhead to the subcontracting plan must also be obtained. In accordance with FAR 52.219-9(f), the contracting officer may negotiate any deviations from the master plan that is necessary to tailor it for a specific contract. When a master plan is accepted, the contracting officer must also obtain a copy of the lead agency contracting officer's approval of the master plan. (A lead agency is the first Federal agency to award a contract to a vendor in a given fiscal year.) After goals are negotiated and combined with the master plan to form a total plan, it becomes an "individual" subcontracting plan. Once incorporated into the individual contract, the plan is valid for the life of that contract.

3. Commercial Plans

Commercial plans may be submitted when a vendor sells products or services in regular production that is sold to the general public and/or industry for non-governmental purposes. This type of plan contains administrative elements and goals developed and approved on a company-wide basis. Individual contract goals are not required (see FAR 52.219-9).

Commercial plans are negotiated and approved by the first Federal Government agency to award a contract to that vendor in a given fiscal year, and apply to all contracts awarded during that year for the products and/or services covered by the plan. A copy of the plan and the lead agency contracting officer's approval of the plan must be obtained. The plan must cover the products and services being purchased under the Treasury contract. If it does not, an individual plan must be negotiated.

Commercial plans are valid only for the year in which they are approved. Therefore, a current plan must be obtained and approved prior to modifying or exercising options to contracts containing commercial plans.

D. SOLICITATION CLAUSES AND ATTACHMENTS

1. Subcontracting Plan Outline

Every Treasury solicitation over the applicable subcontracting plan threshold that is not a HUBZone small or 8(a) or small business set-aside must include the "Small, HUBZone Small, Small Disadvantaged, Women-Owned Small, Veteran-Owned Small, and Service Disabled Veteran-Owned Small Business Subcontracting Plan Outline" found at Appendix 9-1.

3. Subcontracting Program Evaluation Criteria

For any acquisition over \$500,000 (\$1,000,000 for construction) where substantial subcontracting opportunities exist, the Contracting Officer shall consider including the Offeror's subcontracting plan shall be one of the evaluation factors for award. The plan evaluation shall be separate from the technical or cost evaluation, and should be worth up to ten percent of the total available points. Where other than point score schemes are used, the subcontracting plan evaluation for factor should constitute up to 10 percent of the total evaluation criteria. If less than 10 percent of the aggregate total of evaluation factors are proposed, then a written justification must be prepared and reviewed by both the bureau SBS and the SBA PCR. When using multiple socio-economic evaluation factors, then all evaluation elements combined (i.e., subcontracting, small disadvantaged business preference, and/or mentor-protégé), shall constitute 10 percent of the aggregate evaluation criteria regardless which evaluation method is used (see also chapters 10 and 11). The Offeror's prior performance on its subcontracting plans shall be worth half of the total number of points available for that factor. The following is suggested language for a solicitation:

- Subcontracting Program Performance. The Offeror's proposed small, HUBZone small, small disadvantaged women-owned small, veteran-owned small, and service disabled veteran-owned small business subcontracting plan will be evaluated to determine whether it represents the maximum practicable opportunity for subcontracting. The Offeror's record of previous performance in carrying out the intent of the subcontracting program will be considered as approximately equal in value. Offerors are encouraged to submit aggressive subcontracting plans and documentation which demonstrates their prior corporate support for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business suppliers. Small business offerors shall receive the maximum possible number of points for this factor (small business prime contractors are exempt from the subcontracting plan requirements of paragraphs 4-6 of 15 U.S.C. § 637(d)(7)).

E. PUBLICIZING SUBCONTRACTING OPPORTUNITIES

Contracting officers shall encourage prime contractors and subcontractors to use FedBizOpps to publicize subcontracting opportunities stemming from their Government business. The notice must contain the same essential information as the Government's notice advertising the procurement (see 15 U.S.C. § 637(k)(2)). In order to ensure maximum subcontracting opportunities, the cognizant contract specialist shall provide copies of solicitation mailing lists, if available, (not the list of offerors) to SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns upon request. It is not necessary for this request to be submitted using the procedures required by the Freedom of Information Act.

F. REQUIRED ELEMENTS OF A SUBCONTRACTING PLAN

A subcontracting plan must be obtained from the apparent successful offeror prior to contract award, whether the contract is awarded by sealed bidding or negotiation. A plan shall be requested from all offerors and evaluated for award if the evaluation criteria so provide. The time period for submission is established by the contracting officer, but must allow sufficient time for review, negotiation and approval by the D,OSBD or designee prior to the anticipated contract award date. Ten working days are usually sufficient time to allow for review and approval of the subcontracting plan by the D,OSBD. Negotiations of questioned items of the subcontracting plan may take longer.

G. EVALUATING THE SUBCONTRACTING PLAN

1. The Plan Evaluation Team

a. Contract Specialist/Contracting Officer

The contract specialist/contracting officer must:

- Review the plan to ensure that it is complete and contains all the information described in FAR 19.704;
- Obtain advice and recommendations about the acceptability of the plan and proposed goals from the bureau SBS, the SBA PCR, and the SBA and DCMC subcontracting specialists, when applicable, and the D,OSBD or designee;

- Evaluate the potential for SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB subcontracting based on all available information, including the apparent successful Offeror's previous achievements. Previous involvement of SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns as prime or subcontractors in similar acquisitions should be considered (FAR 19.705-4(a)(1)). The contractor can be requested to provide such data regarding its SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB subcontracting on similar acquisitions. If a follow-on acquisition is involved, good data can be expected to be available. Any previous data on similar prime contract awards should be considered;
- Negotiate, in the case of negotiated procurements, subcontract goals which represent good faith, and aggressive and comprehensive effort on the part of the apparent successful offeror;
- Determine whether the plan provides the maximum practicable opportunity for SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns to participate in the performance of the contract;
- In the case of unacceptable plans for negotiated contracts, advise the contractor in writing why a subcontracting plan was determined to be unacceptable. This should be done as quickly as possible so the contractor can modify the plan within the time limits prescribed. The contractor should be advised how it can make the plan acceptable, e.g., by the use of additional source systems or by establishing more aggressive goals;
- For sealed bid procurements, determine whether the apparent successful bidder has submitted a plan as specified in the clause at FAR 52.219-9, Alternate I. If the plan does not cover each of the required elements, advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the plan is still incomplete on resubmission, the contractor should be found **non-responsive** (see FAR 19.705-4(b));
- In sealed bid procurements, if a submitted plan is responsive (that is, complete) but shows the bidder's intention not to comply with its obligations under the "Best Efforts" clause at FAR 52.219-8 (that is, give its best efforts to award subcontracts to SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns to the fullest extent consistent with the efficient performance of the contract), then the bidder may be found **non-responsible** (see FAR 19.705-4(b)).

b. Bureau Small Business Specialist (SBS)

The contracting activity SBS shall assist the contracting officer in his/her evaluation of the subcontracting plan (see FAR 19-705-4(d)(7)). The SBS will have the benefit of seeing all the subcontracting plans received at the activity, where an individual contracting officer may only see a few.

If the SBS has delegated authority from the D,OSBD, then the SBS shall approve the subcontracting plan.

c. Small Business Administration (SBA)

The SBA's resident PCR must be provided an opportunity to review all proposed subcontracting plans submitted to bureaus located in the Washington, D.C. metropolitan area. The D,OSBD or designee may request the PCR's advice on plans received from locations outside his/her jurisdiction. Advice on the contractor's compliance with the subcontracting program should also be sought from the SBA Commercial Marketing Representative (CMR) located in the geographic area closest to the headquarters of the prime contractor. The CMR specializes in evaluating subcontracting plans and programs. A listing of the CMR offices is available from the SBS.

d. Director, Office of Small Business Development (D,OSBD)

The D,OSBD or designee shall review plans following their review by the contracting officer, bureau SBS and SBA PCR to ensure their conformance with Treasury policy and ensure that subcontracting program policies are consistently applied. The D,OSBD will have the benefit of seeing plans submitted by contractors to all Treasury bureaus, and be aware of their previous compliance with individual plans and the subcontracting program in general.

e. Defense Contract Management Command

The Defense Contract Management Command (DCMC) district or regional offices, or other contract administration office, shall be requested, as required by FAR 19.706(a), to comment on the contractor's past performance and compliance with subcontracting plans. Such past compliance is a factor in determining the contractor's responsibility as required by FAR 19-705-5(a)(1). The DCMC Deputy for Small Business will have the benefit of knowledge and experience of a contractor's performance on a wide range of subcontracting plans, and of the contractor's personnel, capabilities and procedures. In most cases, the contracting officer's experience with a particular contractor will be much narrower. A listing of the DCMC offices is available from the SBS.

2. Evaluation Factors

The following questions should be answered to provide a basis for evaluating the subcontracting plan:

- Are the elements listed in FAR 52.219-8 included in the plan? (This is the **absolute minimum**.)
- Are affirmative goals included? In no case are "zero" goals acceptable.
- Has the prime contractor previously performed this service or produced the supplies? Have they complied with previous subcontracting plans?
- Have SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns previously performed this or similar acquisitions as a prime or subcontractor?
- What is the prime contractor's method of involving SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns as subcontractors? How does it plan to locate and solicit these firms?
- What types of records are maintained to demonstrate the contractor's intention to comply with the plan?
- Does the contractor have a "make-or-buy" program applicable to this acquisition?
- Do the plan and the contractor's in-house systems constitute a good faith effort to use SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns as subcontractors?
- Do the proposed goals reflect the maximum practicable opportunity for SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns to participate as subcontractors?

3. Plan Review Procedures

a. Sealed Bids

The apparent successful bidder submits a plan. The contracting officer or contract specialist reviews the plan and shall complete a "Subcontracting Plan Review Checklist," Appendix 9-2. The plan, review checklist, and proposed contract are submitted to the bureau SBS for review. The SBS will provide recommendations on subcontracting opportunities offered under the contract and the acceptability of the subcontracting plan.

The plan is submitted to the SBA PCR for review and concurrence. The PCR may also make recommendations about the acceptability of the plan and its goals.

The contracting officer reviews the SBS and PCR recommendations. If the plan does not cover all of the required elements, the contracting officer must advise the contractor of the deficiency and request a revision or a new plan by a specific date.

After a complete plan is submitted, but before the contracting officer has accepted it, the plan must be forwarded to the D,OSBD or designee for review and approval. A copy of the proposed plan and the Subcontracting Plan Review Checklist must be forwarded to the D,OSBD or designee at least 10 working days prior to award. The D,OSBD or designee will make every effort to respond within 5 working days. For any acquisition over \$500,000 (\$1,000,000 for construction) with substantial subcontracting opportunities, the contracting officer and bureau SBS should request the D,OSBD's or designee's involvement much earlier in the acquisition cycle. After receiving the D,OSBD's or designee's approval of the plan, **the contracting officer shall make it a material part of the contract** (see 15 U.S.C.§ 637(d)(5)(B)).

If a complete and responsive plan is not submitted within the established time period, the contracting officer must reject the bid as **non-responsive** (see FAR 19.705-4(b)).

If the plan, although responsive, shows the contractor's intent not to comply with the "Best Efforts" clause, the contracting officer may find the bidder **non-responsible** (see 15 U.S.C.§ 637(d)(5)(B) and FAR 19.705-4(b)).

b. Competitive Proposals

The apparent successful offeror submits a plan. If the procurement is over \$500,000 (\$1,000,000 for construction), with many subcontracting opportunities, plans shall be requested from all offerors or from all offerors in the competitive range. The contracting officer or contract specialist reviews the plan(s) and completes a "Subcontracting Plan Review Checklist," Appendix 9-2. The plan, review checklist, and proposed contract are submitted to the bureau SBS for review. The SBS will provide recommendations on subcontracting opportunities offered under the contract and the acceptability of the subcontracting plan.

The plan is submitted to the SBA PCR for review and concurrence. The PCR may also make recommendations about the acceptability of the plan and its goals. The contracting officer reviews the SBS and PCR recommendations. If the plan does not cover all of the required elements, the contracting officer must advise the contractor of the deficiency and request a revision or a new plan by a specific date.

After a complete plan is submitted, but before the contracting officer has accepted it, the plan must be forwarded to the D,OSBD or designee for review and approval as described above under "Sealed Bids." Adequacy of the subcontracting plan is determined on the basis of negotiation of each of the required elements. An acceptable subcontracting plan must be negotiated prior to award.

For contractors who submit approved master plans, only the individual contract goals must be negotiated. Other elements of the master plan may be negotiated to conform to the requirements of the Treasury contracting officer. If a commercial plan and associated approvals are submitted, no negotiation is required.

4. Other Considerations

a. Incentives

PL 95-507 encourages the use of various incentives to support subcontracting (see 15 U.S.C. § 637(d)(4)(E) and FAR 19.705-1). Various approaches are acceptable, including a fully quantified schedule of payments or award fees. One of the simplest approaches is to include the subcontracting plan as an evaluation factor in the solicitation, and require a plan to be submitted by all offerors except small businesses (15 U.S.C. § 637(d)(8) exempts small businesses from the subcontracting plan requirements of 15 U.S.C. § 637(d)(4)-(6)). See Section D.2. above, "Subcontracting Program Evaluation Criteria," for suggested wording for this evaluation factor.

Other types of incentive provisions may be negotiated after agreement on the basic plan. Use of incentives must be governed by assurance that the established goals are realistic, and award fees must be commensurate with contractor effort beyond that which would have been expended under the basic plan (see FAR 19.705-1).

b. Contractor Responsibility

Before determining the responsibility of an offeror on a contract requiring a subcontracting plan, the contracting officer shall review the Offeror's compliance with previous subcontracting plans, if any, approved by that contracting office. The review must include the contractor's performance in submitting subcontracting reports in a timely manner. Failure to submit a plan which shows a good faith effort to use SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns must be a factor in determining responsibility.

c. Profit or Fee

The degree of a contractor's support for the subcontracting program must be considered as a factor in determining the amount of profit or fee (see FAR 15.404-4(d)(iii)). SBA, DCMC, and/or a previous administrative contracting officer should be consulted for advice on the contractor's subcontracting program. Some offices assign a standard point value to use as the "other factor" on the basis of their periodic evaluations of the contractor's efforts.

5. Awarding the Contract With a Subcontracting Plan

After approval by the D, OSBD or designee and acceptance by the contracting officer, the subcontracting plan must be made a material part of the contract. It may be incorporated in its entirety or by reference.

All Treasury contracts, which include subcontracting plans, must also include submission of the SF 294 and/or SF 295 reports, whichever applies, as a not separately priced line item deliverable under the contract.

H. POST-AWARD ACTION

1. Synopsis of Award

The contracting officer should indicate in the award synopsis that a contract includes a subcontracting plan, and provide the address and telephone number of the subcontracting plan administrator. The contracting officer should also encourage prime contractors and subcontractors to publicize subcontracting opportunities in FedBizOpps.

2. Notifying SBA

The contracting officer shall forward a copy of the award document and subcontracting plan to the SBA Commercial Marketing Representative (CMR) in the SBA region where the contract will be performed. A listing of the SBA CMR addresses may be obtained from the SBS. A sample transmittal letter to SBA may be found at Appendix 9-5. The contracting officer shall send a copy of any company-wide commercial plans and associated approvals to the SBA CMR in the SBA region where the contractor's headquarters is located.

3. Contract Administration Responsibilities

a. General Administration of the Plan

The contracting officer monitors and documents the contractor's performance under the plan. He or she is responsible for reviewing the contractor's compliance with goals and procedures established in the plan, including implementation of the "flow-down" provisions to lower tier subcontractors.

b. Monitoring Reports

The contracting officer shall monitor receipt of SF 294/295 reports for individual contract plans or SF 295 reports for company-wide plans and review the reports for progress in meeting subcontracting plan goals by comparing the reports with the plan. Upon receipt of the SF 294 and SF 295 reports, the contracting officer shall complete the "Subcontracting Performance Evaluation Report" attached as Appendix 9-6. A copy of the Subcontracting Performance Evaluation Report shall be furnished to the Small Business Specialist with a copy of the SF 294 and SF 295 reports.

If percentage goals are not met, the contractor must be required to explain the shortfall in the "Remarks" block on the subcontracting reports and may be required to submit evidence of its outreach efforts to locate and provide subcontracting opportunities to SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by total compliance with the subcontracting plan. The contracting officer shall also obtain delinquent SF 295 reports from contractors for both individual and company-wide plans.

c. Procedures for Delinquent Reports

Contractors who fail to submit SF 294 and SF 295 reports within 10 calendar days of the due date must be reminded in writing that the report is past due. Sample delinquency notices are attached at Appendix 9-7. Contractors who do not respond to the first notice must be issued a second written notice by certified mail that must contain the following information:

- A statement that the named report has not been received;
- A statement that failure to submit the report is a material breach of the contract;
- A statement that if the report is not received within 15 calendar days from the date of the notice, the contracting officer will consider withholding payments as deemed appropriate under the circumstances until the report is received, and may terminate the contract for default;
- A reminder that failure to submit the report may affect the contractor's ability to receive future awards from Department of the Treasury bureaus and that willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government. Adverse information may also be added to the bureau's past performance database which may affect future awards; and
- The address of the contracting officer or administrative contracting officer to whom the report must be sent.

Copies of delinquency notices concerning SF 294 or SF 295 reports shall be sent to the Small Business Specialist (see FAR 19.705-7(c)).

d. Final Performance Assessments

Upon contract completion, the contract administration office shall submit a report documenting and evaluating the contractor's performance under the subcontracting plan. The report shall be submitted on the "Final Subcontracting Performance Evaluation Report" attached as Appendix 9-8. A copy of the report shall be forwarded to the contracting officer and the Small Business Specialist and shall be submitted within 10 working days of contract completion.

The report should include (1) the extent to which the goals were met, (2) whether the contractor's efforts were consistent with the effort proposed in the plan, and (3) whether the contractor required its subcontractors to adopt similar subcontract plans (see FAR 19.706(d)). **If the contractor did not comply in good faith with the subcontracting plan, the administrative contracting officer shall document the noncompliance in writing, include the reasons, and make appropriate recommendations that contracting officers may use for future contracts.**

e. Contracting Officer Duties

The contracting officer determines the fee payable if an incentive is applied. If the contractor fails to implement the plan, which is a material breach of the contract, the contracting officer may:

- Terminate the contract for default;
- Withhold payments;
- Negotiate a reduction in the contract price;
- Negotiate a revised plan to correct deficiencies; and
- Initiate action to assess liquidated damages against the contractor. Liquidated damages will be equal to 100 percent of the amount by which the contractor failed to meet its goal, and are payable to the procuring agency.

The contracting officer should forward copies of SF 294 and SF 295 reports received from contractor to the bureau Small Business Specialist.

APPENDIX 9-1
DEPARTMENT OF THE TREASURY
SMALL, HUBZone SMALL, SMALL DISADVANTAGED, WOMEN-OWNED SMALL,
VETERAN-OWNED SMALL BUSINESS, & SERVICE DISABLED VETERAN OWNED
SMALL BUSINESS CONCERNS SUBCONTRACTING PLAN OUTLINE

The following outline meets the minimum requirements of Public Law 95-507 and the Federal Acquisition Regulation (FAR) Subparts 19.7. It is intended to be a guideline. It is not intended to replace any existing corporate plan which is more extensive. If assistance is needed to locate small business sources, contact the bureau Small Business Specialist. Please note that the Department of the Treasury (or bureau name) has subcontracting goals of ___% for small business, ___% for HUBZone small business, ___% for small disadvantaged business, ___% for women-owned small business, and ___% for Service Disabled Veteran-Owned small business concerns for fiscal year 20XX. Although there is no statutory goal for Veteran-Owned small business (VOSB) concerns, a VOSB goal must be proposed in accordance with FAR 19.7 and should represent the Offeror's effort to provide the maximum practicable subcontracting opportunities for VOSBs. These percentages shall be expressed as percentages of the total available subcontracting dollars.

Identification Data:

Company Name: _____

Address: _____

Date Prepared: _____ Solicitation Number: _____

Item/Service: _____

Place of Performance: _____

1. TYPE OF PLAN: (Check only one).

_____ INDIVIDUAL PLAN: In this type of plan all elements are developed specifically for this contract and are applicable for the full term of this contract.

_____ MASTER PLAN: In this type of plan, goals are developed for this contract; all other elements are standard. The master plan must be approved every three (3) years. Once incorporated into a contract with specific goals, it is valid for the life of the contract.

_____ COMMERCIAL PLAN: This type of plan is used when the contractor sells products and services customarily used for nongovernment purposes. Plan/goals are negotiated with the initial agency on a company-wide basis rather than for individual contracts. The plan is effective only during year approved. The contractor must provide a copy of the initial agency approval, AND MUST SUBMIT AN ANNUAL SF 295 TO TREASURY WITH A BREAKOUT OF SUBCONTRACTING PRORATED FOR TREASURY (WITH A BUREAU BREAKDOWN, IF POSSIBLE).

2. GOALS:

FAR 19.704(a)(1) requires separate dollar and percentage goals for using small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business, veteran-owned small business, and service disabled veteran-owned small business concerns as subcontractors for the base year and each option year. (Please note that the goals for HUBZone small business, small disadvantaged business, women-owned small business, veteran-owned small business, and service disabled veteran-owned small business concerns are sub-sets of the small business goal).

A. Estimated dollar value of all planned subcontracting, i.e., to all types of business concerns under this contract is:

FY__	FY__	FY__	FY__	FY__
<u>BASE</u>	<u>1ST OPTION</u>	<u>2ND OPTION</u>	<u>3RD OPTION</u>	<u>4TH OPTION*</u>
\$_____	\$_____	\$_____	\$_____	\$_____

B. Estimated dollar value* and percentage of planned subcontracting to small business concerns is:

(*This figure includes the amount in C., D., E., F., and G. below.)

FY__	FY__	FY__	FY__	FY__
<u>BASE</u>	<u>1ST OPTION</u>	<u>2ND OPTION</u>	<u>3RD OPTION</u>	<u>4TH OPTION*</u>
\$_____	\$_____	\$_____	\$_____	\$_____
_____ %	_____ %	_____ %	_____ %	_____ %

C. Estimated dollar value and percentage of planned subcontracting to HUBZone small business concerns is:

FY__	FY__	FY__	FY__	FY__
<u>BASE</u>	<u>1ST OPTION</u>	<u>2ND OPTION</u>	<u>3RD OPTION</u>	<u>4TH OPTION*</u>
\$_____	\$_____	\$_____	\$_____	\$_____
_____ %	_____ %	_____ %	_____ %	_____ %

D. Estimated dollar value and percentage of planned subcontracting to small disadvantaged business concerns is:

FY__	FY__	FY__	FY__	FY__
<u>BASE</u>	<u>1ST OPTION</u>	<u>2ND OPTION</u>	<u>3RD OPTION</u>	<u>4TH OPTION*</u>
\$_____	\$_____	\$_____	\$_____	\$_____
_____ %	_____ %	_____ %	_____ %	_____ %

E. Estimated dollar value and percentage of planned subcontracting to small women-owned business concerns is:

FY__	FY__	FY__	FY__	FY__
<u>BASE</u>	<u>1ST OPTION</u>	<u>2ND OPTION</u>	<u>3RD OPTION</u>	<u>4TH OPTION*</u>
\$_____	\$_____	\$_____	\$_____	\$_____
_____ %	_____ %	_____ %	_____ %	_____ %

K. If indirect and overhead costs HAVE BEEN included, explain the method used to determine the proportionate share of such costs to be allocated as subcontracts to small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service disabled veteran-owned small business concerns.

3. PLAN ADMINISTRATOR:

FAR 19.704(a)(7) requires information about the company employee who will administer the subcontracting program. Please provide the name, title, address, phone number, position within the corporate structure and the duties of that employee.

Name:

Title:

Address:

Telephone:

Fax:

E:mail Address:

Position:

Duties: Does the individual named above perform the following? (If NO is checked, please indicate who in the company performs those duties, or indicate why the duties are not performed in your company).

A. Developing and promoting company/division policy statements that demonstrate the company's/division's support for awarding contracts and subcontracts to small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service disabled veteran-owned small business concerns.

_____YES _____NO

B. Developing and maintaining bidders' lists of small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business concerns from all possible sources.

_____YES _____NO

- C. Ensuring periodic rotation of potential subcontractors on bidders' lists.
_____YES _____NO
- D. Assuring that small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small businesses are included on the bidders' list for every subcontract solicitation for products and services they are capable of providing.
_____YES _____NO
- E. Ensuring that subcontract procurement "packages" are designed to permit the maximum possible participation of small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small businesses.
_____YES _____NO
- F. Reviewing subcontract solicitations to remove statements, clauses, etc., which might tend to restrict or prohibit small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business participation.
_____YES _____NO
- G. Ensuring that the subcontract bid proposal review board documents its reasons for not selecting any low bids submitted by small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business concerns.
_____YES _____NO
- H. Overseeing the establishment and maintenance of contract and subcontract award records.
_____YES _____NO
- I. Attending or arranging for the attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.
_____YES _____NO
- J. Directly or indirectly counseling small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business concerns on subcontracting opportunities and how to prepare responsive bids to the company.
_____YES _____NO
- K. Providing notice to subcontractors concerning penalties for misrepresentations of business status as small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, or service disabled veteran-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan.
_____YES _____NO
- L. Conducting or arranging training for purchasing personnel regarding the intent and impact of Public Law 95-907 on purchasing procedures.
_____YES _____NO

- M. Developing and maintaining an incentive program for buyers which supports the subcontracting program.
 YES NO
- N. Monitoring the company's performance and making any adjustments necessary to achieve the subcontract plan goals.
 YES NO
- O. Preparing and submitting timely reports.
 YES NO
- P. Coordinating the company's activities during compliance reviews by Federal agencies.
 YES NO

4. EQUITABLE OPPORTUNITY

FAR 19.704(a)(8) requires a description of the efforts your company will make to ensure that small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business concerns will have an equitable opportunity to compete for subcontracts. (Check all that apply.)

A. Outreach efforts to obtain sources:

- Contacting minority and small business trade associations
- Contacting business development organizations
- Attending small and minority business procurement conferences and trade fairs
- Finding sources from the Small Business Administration's Procurement Network (ProNet)

B. Internal efforts to guide and encourage purchasing personnel:

- Presenting workshops, seminars and training programs
- Establishing, maintaining and using small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business source lists, guides and other data for soliciting subcontracts
- Monitoring activities to evaluate compliance with the subcontracting plan

C. Additional efforts: (Please describe.)

5. CLAUSE INCLUSION AND FLOW DOWN

FAR 19.704(a)(9) requires that your company include FAR 52.219-8, "Utilization of Small Business Concerns", in all subcontracts that offer further subcontracting opportunities. Your company must require all subcontractors, except small business concerns, that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt and comply with a plan similar to the plan required by FAR 52.219-9, "Small Business Subcontracting Plan."

Your company agrees that the clause will be included and that the plans will be reviewed against the minimum requirements for such plans. The acceptability of percentage goals for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business concerns must be determined on a case-by-case basis depending on the supplies and services involved, the availability of potential small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business subcontractors and prior experience. Once the plans are negotiated, approved, and implemented, the plans must be monitored through the submission of periodic reports, including Standard Form (SF) 294 and SF 295 reports.

6. REPORTING AND COOPERATION

FAR 19.704(a)(10) requires that your company (1) cooperate in any studies or surveys as may be required, (2) submit periodic reports which show compliance with the subcontracting plan; (3) submit Standard Form (SF) 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," in accordance with the instructions on the forms; and (4) ensure that subcontractors agree to submit SF 294 and SF 295. The cognizant contracting officer of the Treasury bureau must receive the report(s) within 30 days after the close of each calendar period. That is:

<u>Calendar Period</u>	<u>Report Due</u>	<u>Date Due</u>	<u>Send Report To</u>
10/01--03/31	SF 294	04/30	bureau contracting officer
04/01--09/30	SF 294	10/30	bureau contracting officer
10/01--09/30	SF 295	10/30	bureau contracting officer

NOTE: A copy of the 295 report must also be sent to the Director, Office of Small Business Development, Department of the Treasury. The address is as follows:

Department of the Treasury
Attn: Director, Office of Small
Business Development
1500 Pennsylvania Avenue, N.W.
(Attn: 1310 G/400 West)
Washington, DC 20220

7. RECORDKEEPING

FAR 19.704(a)(11) requires a list of the types of records your company will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. (Check all that apply.) (If NO is checked, please indicate why these types of records are not maintained).

- A. Small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business concern source lists, guides, and other data identifying such vendors.
_____YES _____NO
- B. Organizations contacted for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business sources.
_____YES _____NO
- C. On a contract-by-contract basis, records on all subcontract solicitations over \$100,000 which indicate for each solicitation (1) whether small business concerns were solicited, and if not, why not; (2) whether HUBZone small business concerns were solicited, and if not, why not; (3) whether small disadvantaged business concerns were solicited, and if not, why not; (4) whether women-owned small business concerns were solicited, and if not, why not; (5) whether veteran-owned small business concerns were solicited, and if not, why not; (6) whether service disabled veteran-owned small businesses were solicited, and if not, why not; and (7) reasons for the failure of solicited small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, and service disabled veteran-owned small business concerns to receive the subcontract award.
_____YES _____NO
- D. Records to support other outreach efforts, e.g., contacts with minority and small business trade associations, attendance at small and minority business procurement conference and trade fairs.
_____YES _____NO
- E. Records to support internal activities to (1) guide and encourage purchasing personnel, e.g., workshops, seminars, training programs, incentive awards; and (2) monitor activities to evaluate compliance.
_____YES _____NO
- F. On a contract-by-contract basis, records to support subcontract award data including the name, address and business size and ownership status (HUBZone, SDB, WOB, VOSB, SDVOSB, etc.) of each subcontractor. (This item is not required for company or division-wide commercial plans.)
_____YES _____NO
- G. Other records to support your compliance with the subcontracting plan: (Please describe)

8. TIMELY PAYMENTS TO SUBCONTRACTORS

FAR 19.702 requires your company to establish and use procedures to ensure the timely payment of amounts due pursuant to the terms of your subcontracts

This subcontracting plan was REVIEWED by:

Signature:

Typed Name:

Title: Small Business Specialist

Date:

This subcontracting plan was REVIEWED by:

Signature:

Typed Name:

Title: Small Business Administration Representative

Date:

This subcontracting plan was APPROVED by:

Signature:

Typed Name:

Title: Director, Office of Small Business Programs (or designee)

Date:

This subcontracting plan was ACCEPTED by:

Signature:

Typed Name:

Title: Contracting Officer

Date:

Appendix 9-2
SUBCONTRACTING PLAN REVIEW CHECKLIST (January 2002)

Items on this checklist should be completed with information from the proposed prime contract and the subcontracting plan. If the plan is missing any listed in Section II, "Required Elements of the Subcontracting Plan", it is incomplete and may not be accepted by the Contracting Officer. After the completed plan is reviewed, it shall be submitted to the SBA Procurement Center Representative (PCR) prior to submission to the Director, Small Business Development or designee for approval. An acceptable plan must be approved by the Contracting Officer prior to contract award.

Contract Number _____ Contract Value: Base _____ Options _____

Expiration Date: Base _____ Options _____

Principal Product or Service _____

Contractor _____

Address _____

I. TYPE OF SUBCONTRACTING PLAN (check one)

- Individual Contract Plan _____
- Master Plan with Individual Goals _____
- Commercial Products Plan _____

II. REQUIRED ELEMENTS OF THE SUBCONTRACTING PLAN YES NO

A. PLAN ADMINISTRATOR

- 1. Administrator's Name _____ Telephone # _____ _____
- 2. Description of his/her duties relating to the administration of this subcontracting plan _____

B. EFFORTS TO ENSURE EQUITABLE OPPORTUNITY

Description of efforts to assure that small businesses have an equitable opportunity to compete for subcontracts. _____

C. CLAUSE INCLUSION AND FLOW DOWN

- 1. FAR 52.219-8 will be included in all subcontracts which offer further subcontracting opportunities _____
- 2. Subcontractors, except small businesses, who receive subcontracts over the applicable threshold (\$500,000 or \$1,000,000) will adopt a similar subcontracting plan. _____

D. REPORTING AND COOPERATION

- 1. Agreement to submit SF 294 and SF 295 reports. _____
- 2. Agreement to cooperate in studies, surveys, etc. conducted by the ACO, PCO, SBA and others. _____

E. RECORD KEEPING

- 1. Description of records maintained to show compliance with plan requirements and procedures. _____
- 2. Source lists and vendor data on SB, HUBZone, SDB, WOB, VOSB & SDVOSB concerns _____
- 3. Lists of organizations contacted for sources. _____
- 4. For each contract, bidder's lists on subcontract solicitations over \$100,000 (explain absence of SB, HUBZone, SDB, WOB, VOSB, or SDVOSB concerns) and reasons if responding SB concerns failed to receive award _____
- 5. Efforts made to develop SB, HUBZone, SDB, WOB, VOSB, & SDVOSB sources. _____
- 6. Description of buyer training and monitoring. _____
- 7. For other than Commercial Plans, on each subcontract, name, address, size and business type of awardee. _____

F. DESCRIPTION OF GOOD FAITH EFFORTS TO ACHIEVE THE PLAN _____

G. GOALS

<u>BASE YEAR</u>	<u>1ST OPTION</u>	<u>2ND OPTION</u>	<u>3RD OPTION</u>	<u>4TH OPTION</u>
<u>1. Total Subcontracting</u>				
\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %
\$ _____ 100%	\$ _____ 100%	\$ _____ 100%	\$ _____ 100%	\$ _____ 100%
<u>2. Small Business Subcontracting (sub-set of item 1)</u>				
\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %
<u>3. HUBZone Small Business Subcontracting (subset of item 2)</u>				
\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %
<u>4. Small Disadvantaged Business Subcontracting (sub-set of item 2)</u>				
\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %
<u>5. Women-Owned Small Business Subcontracting (sub-set of item 2)</u>				
\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %
<u>6. Veteran-Owned Small Business Subcontracting (sub-set of item 2)</u>				
\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %
<u>7. Service Disabled Veteran-Owned Small Business Subcontracting (sub-set of item 2)</u>				
\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %	\$ _____ %

8. Description of subcontracted items and services: _____

- | | | |
|---|------------|-----------|
| 9. Description of method of developing goals. | <u>YES</u> | <u>NO</u> |
| 10. Are overhead and other indirect costs included in the plan goals? | _____ | _____ |
| 11. If yes, description of method allocating these costs to the plan. | _____ | _____ |
| 12. Description of method of identifying sources to solicit. | _____ | _____ |
| 13. Timely payments to subcontractors. | _____ | _____ |

III. PLAN EVALUATION

A. Sources checked to determine contractor compliance with previous subcontracting plans and verify reasonableness of proposed goals:

- SBA Regional Procurement Assistance staff: _____
- Defense Contract Management Command (DCMC) Small Business Specialist: _____ Rating: _____
- Other Agency Contracting Officers: _____

- Copy of approval letter for Commercial Products Plan. _____
- Copy of letter approving administrative elements of Master Plan. _____
- Master Plan includes separate goals. _____
- Plan demonstrates the Contractor's good faith efforts to use small business concerns as subcontractors to the maximum extent practicable. _____

Contract Specialist/Officer _____ Date _____

Small Business Specialist _____ Date _____

SBA/PCR Concurrence _____ Date _____

APPENDIX 9-3

SUBCONTRACTING PLAN EVALUATION WORKSHEET

INSTRUCTIONS: A narrative explanation is suggested, where specified, and for all "No" answers to "Yes" or "No" questions.

Yes No

Questions 1 through 3 apply to Master Subcontracting Plans only.

1. Does the contractor have an approved Master Subcontracting Plan? _____

2. If yes, do you have a copy of the Master Plan? _____

3. If yes, do you have a copy of the lead agency contracting officer's approval? _____

The remaining questions should be answered for all plans.

4. Were comments of the bureau SBS requested and used in this evaluation? _____

5. Was the SBA Procurement Center Representative (if any) given the opportunity to review the plan? _____

6. Were comments of the cognizant contract administration office (CAO) requested and used in this evaluation? _____

7. How did the cognizant CAO rate this contractor's overall Small (SB), HUBZONE Small, Small Disadvantaged Business (SDB), Women-Owned Small Business (WOB), Veteran-Owned Small Business, and Service Disabled Veteran-Owned Small Business Subcontracting Program? (Circle one) _____

1. Outstanding 2. Above Average 3. Average 4. Below Average 5. Unacceptable 6. Unknown

8. If the contractor's program was rated "unacceptable," detail the reason(s) for the rating:

9. If the contractor's plan was rated "unacceptable," detail the reason(s) for the rating:

10. If the contractor's plan was rated "unacceptable," detail your rationale for finding the contractor in compliance with PL 95-507 and the FAR:

11. Does the contractor propose separate SB, HUBZONE, SDB, WOB, VOSB, & SDVOSB percentage goals? _____

12. Does the contractor express the goals as a percentage of total planned subcontracting dollars? _____

13. Does the contractor state the total dollars planned to be subcontracted? _____

14. Does the contractor state the total dollars planned to be subcontracted to SB concerns? _____

15. Does the contractor state the total dollars planned to be subcontracted to HUBZONE small concerns? _____

16. Does the contractor state the total dollars planned to be subcontracted to SDB concerns? _____

17. Does the contractor state the total dollars planned to be subcontracted to WOB concerns? _____

18. Does the contractor state the total dollars planned to be subcontracted to VOSB concerns? _____

19. Does the contractor state the total dollars planned to be subcontracted to SDVOSB concerns? _____

20. Does the contractor describe the principal product and service areas to be subcontracted to all businesses? _____

21. Does the contractor describe the product and service areas where SB, HUBZone, SDB, WOB, VOSB, and SDVOSB concerns will be considered for subcontract awards? _____
22. Does the contractor describe the method used to develop the goals? _____
23. Does the contractor include **indirect or overhead** costs as an element in developing goals? _____
24. If yes, does the contractor describe the method used to determine the proportionate share of the indirect and overhead costs for this contract? _____
25. Does the contractor describe the method used to locate and identify SB, HUBZONE, SDB WOB, VOSB, and SDVOSB sources to solicit for subcontracts under this procurement? _____
26. Does the contractor provide the name and describe the duties of the individual that will administer the subcontracting plan? _____
27. Does the contractor describe the efforts it will make to assure that SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB concerns will have an **equitable opportunity to compete** for subcontracts? _____
28. Does the contractor describe in detail the steps it will take to achieve the objectives of the subcontracting plan? _____
29. Does the contractor include the clause at FAR 52.219-8, "Utilization of Small Business Concerns," in all subcontracts that offer further subcontracting opportunities? _____
30. Does the contractor require all subcontractors except SB concerns to adopt a subcontracting plan in consonance with FAR 52.219-9 for all appropriate subcontracts? _____
31. Does the contractor provide assurance that it will submit required subcontracting report forms in accordance with the instructions on the forms? _____
32. Does the contractor provide assurance that it will require its lower tier subcontractors to submit reports? _____
33. Does the contractor provide assurance that it will cooperate in any studies or surveys as may be required to determine compliance with the plan? _____
34. Does the contractor provide assurance that records will be maintained? _____
35. Does the contractor's recitation of the types of records include:
 - a. SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB source lists? _____
 - b. Efforts to identify and award subcontracts to SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB firms? _____
 - c. Organizations contacted for SB, HUBZONE, SDB and WOB sources including:
 - Contacts with SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB trade associations? _____
 - Contacts with business development organizations? _____
 - Attendance at SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB procurement conferences and trade fairs? _____
 - d. Records to support internal activities to guide buyers, including:
 - Workshops, seminars and training programs? _____
 - Monitoring activities to evaluate compliance? _____
 - e. On a contract-by-contract basis, records on all subcontract solicitations over \$100,000 indicating on each solicitation:
 - Whether SB was solicited and if not, why not? _____
 - Whether HUBZONE was solicited and if not, why not? _____
 - Whether SDB was solicited and if not, why not? _____
 - Whether WOB was solicited and if not, why not? _____
 - Whether VOSB was solicited and if not, why not? _____
 - Whether VOSB was solicited and if not, why not? _____
 - The reason for failure of a responding SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB to receive the subcontract award? _____
 - f. Records on a contract-by-contract basis to support award data including name, address, size and ownership status of each subcontractor? _____

36. In support of SB, HUBZONE, SDB, WOB, VOSB, and SDVOSB programs, does the contractor's subcontracting plan identify:
- a. Company-wide policy statements? _____
 - b. Written procedures and instructions? _____
 - c. Assignment of specific responsibilities regarding this program? _____
 - d. Continuing management interest and involvement through the use of progress reviews and corporate and division goals? _____
 - e. A program to train and motivate personnel to support subcontracting with SB, HUBZone, SDB, WOB, VOSB, and firms? _____
 - f. Assistance to SB, HUBZone, SDB, WOB, VOSB, and SDVOSB concerns to facilitate their participation? _____
 - g. That the contractor provides adequate and timely consideration of the potential of SB, HUBZone, SDB, WOB, VOSB, and SDVOSB concerns in make-or-buy decisions? _____
37. Does the subcontracting plan provide for the contractor to counsel and discuss subcontracting opportunities with SB, HUBZone, SDB, WOB, VOSB, and SDVOSB concerns? _____
38. Does the contractor have a system to ensure timely payment of amounts due pursuant to the terms of its subcontracts with SB, HUBZone, SDB, WOB, VOSB, and SDVOSB concerns? _____
39. Does the plan provide the **maximum practicable opportunity for SB, HUBZone, SDB, WOB, VOSB, and SDVOSB participation**? _____
40. Is the subcontracting plan as submitted acceptable? _____
41. If the plan is unacceptable, has the contractor been notified of the deficiencies in writing? _____
42. Should an **incentive clause** (FAR 52.219-10) be included in this contract? If not, why not? _____

APPENDIX 9-4

SAMPLE SUBCONTRACTING PLAN TRANSMITTAL MEMORANDUM

(Date)

MEMORANDUM FOR: (Name)
Small Business Specialist

FROM: (Name)
Contracting Officer

SUBJECT: Review of Subcontracting Plan for Small, HUBZone Small, Small Dis-
advantaged, Women-Owned Small, Veteran-Owned Small, and Service
Disabled Veteran-Owned Small Business Concerns from (Contractor Name)
Solicitation/Contract No. _____
Modification/Option No. _____

Please review the subject plan in accordance with the requirements of FAR 19.705-4 and
DTAR 1019.7.

1. Acquisition Description: _____
2. Supplies/services not specifically covered in the subcontracting goals in the plan that
may have been discussed between the contract specialist/contracting officer and the
contractor: _____
3. Total contract amount including all options: \$ _____
Amount for each option: \$ _____
4. Remarks: _____

For further information, please contact me at (telephone number).

Enclosure(s):
Copy of Subcontracting Plan
Copy of Cost Proposal (if needed)
Copy of Statement of Work (if needed)

APPENDIX 9-5

SAMPLE TRANSMITTAL LETTER TO SBA

(Date)

Area Director, Office of Government
Contracting
Small Business Administration
Region (*insert number*)
(Address)

In accordance with FAR 19.705-6(a), enclosed is a copy of the Small, HUBZone small, Small Disadvantaged, Women-owned small, Veteran-Owned small, and Service Disabled Veteran-Owned small business subcontracting plan for contract (*insert number*) with (*insert name of company*) located in your region. The total estimated value of the contract is (*insert total estimated value, including options*); the expiration date of the last option period is (*insert date*).

Please direct any questions to (*administrative contracting officer*) on telephone (*insert number*).

Sincerely,

Contracting Officer

APPENDIX 9-6

SUBCONTRACTING PERFORMANCE EVALUATION REPORT

TO: Bureau Small Business Specialist

Date:

Reporting Period:

From:

To:

Was Report submitted timely?

YES

NO

Contract No.:

Type of Contract:

Contractor's Name &

Address:

Contract Award Date:

Option Date:

From:

To:

Contract Completion Date:

Description of Procurement:

Is the Contractor meeting subcontracting goals to date?

(Please attach a copy of the SF294 and/or SF295 to this report).

- | | | | |
|----------------|--|---|--|
| (A) | Small Business Goal met? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| | Negotiated Contract Percentage Goal | % | |
| | Negotiated Contract Dollar Goal | \$ | |
| | Cumulative Actual Percentage Performed | % | |
| | Cumulative Actual Dollar Performed | \$ | |
| (B) | HUBZone Business Goal met? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| | Negotiated Contract Percentage Goal | % | |
| | Negotiated Contract Dollar Goal | \$ | |
| | Cumulative Actual Percentage Performed | % | |
| | Cumulative Actual Dollar Performed | \$ | |
| (C) | Disadvantaged Business Goal met? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| | Negotiated Contract Percentage Goal | % | |
| | Negotiated Contract Dollar Goal | \$ | |
| | Cumulative Actual Percentage Performed | % | |
| | Cumulative Actual Dollar Performed | \$ | |
| (D) | Women-Owned Business Goal met? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| | Negotiated Contract Percentage Goal | % | |
| | Negotiated Contract Dollar Goal | \$ | |
| | Cumulative Actual Percentage Performed | % | |
| | Cumulative Actual Dollar Performed | \$ | |
| (E) | Veteran-Owned Small Business Goal met? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| | Negotiated Contract Percentage Goal | % | |
| | Negotiated Contract Dollar Goal | \$ | |
| | Cumulative Actual Percentage Performed | % | |
| | Cumulative Actual Dollar Performed | \$ | |
| (F) | Service Disabled Veteran-Owned Small Business Goal met? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| | Negotiated Contract Percentage Goal | % | |
| | Negotiated Contract Dollar Goal | \$ | |
| | Cumulative Actual Percentage Performed | % | |
| | Cumulative Actual Dollar Performed | \$ | |

SUBCONTRACTING PERFORMANCE EVALUATION REPORT cont'd

If ANY answer to the above questions is "NO", please explain why goal(s) was/were not met. Give corrective action taken by the Administrative Contracting Officer and the contractor to assure that goal(s) will be accomplished by contract completion. (If necessary use reverse).

Name of Contracting Officer/Administrator: _____

Telephone Number:

Signature

Date

APPENDIX 9-7
SAMPLE DELINQUENCY NOTICE

Date

Company Name
Address

Dear _____ :

I am writing to you today in reference to the required subcontract plan reports (SF294/295) to be submitted under contract _____ . More than ten (10) calendar days have elapsed from the required due date of the (Insert form number and title of required report(s) - in some cases it might be both the SF294, Subcontracting Report for Individual Contracts and the SF295, Summary Subcontracting Report).

Failure to submit this report is a material breach of the above named contract. If the above report(s) is/are not received within ten (10) calendar days from the date of this notice. I will consider withholding payments as deemed appropriate under the circumstances until the report is received. I may also take action under the termination for default proceedings.

I also must remind you that failure to submit the report(s) may affect your ability to receive future contract awards from the Department of the Treasury and its bureaus. Noncompliance information will be included in the Treasury Past Performance Database. A willful failure to perform or a history of failure to perform may also result in debarment from future contracting with the Government.

The report(s) named above should be sent to (insert the contracting officer's name and complete mailing address). If you have any further questions in this matter, please contact me at _____ (Insert phone number).

Sincerely,

Contracting Officer

cc: (Bureau SBS)

APPENDIX 9-8

FINAL SUBCONTRACTING PERFORMANCE EVALUATION REPORT

TO: Bureau Small Business Specialist Date:

Reporting Period: From: To:
 Were Reports submitted timely? YES NO
 Contract No.: Type of Contract:

Contractor's Name & Address: -

Contract Award Date: From: To:
 Option Date:
 Contract Completion Date:
 Description of Procurement: _____

Did the Contractor meet his subcontracting goals?
(Please attach any narrative on reasons why goals were not met under this contract).

(A)	Small Business Goal met?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	Negotiated Contract Percentage Goal	%	
	Negotiated Contract Dollar Goal	\$	
	Cumulative Actual Percentage Performed	%	
	Cumulative Actual Dollar Performed	\$	
(B)	HUBZone Business Goal met?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	Negotiated Contract Percentage Goal	%	
	Negotiated Contract Dollar Goal	\$	
	Cumulative Actual Percentage Performed	%	
	Cumulative Actual Dollar Performed	\$	
(C)	Small Disadvantaged Business Goal met?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	Negotiated Contract Percentage Goal	%	
	Negotiated Contract Dollar Goal	\$	
	Cumulative Actual Percentage Performed	%	
	Cumulative Actual Dollar Performed	\$	
(D)	Women-Owned Business Goal met?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	Negotiated Contract Percentage Goal	%	
	Negotiated Contract Dollar Goal	\$	
	Cumulative Actual Percentage Performed	%	
	Cumulative Actual Dollar Performed	\$	
(E)	Veteran-Owned Small Business Goal met?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	Negotiated Contract Percentage Goal	%	
	Negotiated Contract Dollar Goal	\$	
	Cumulative Actual Percentage Performed	%	
	Cumulative Actual Dollar Performed	\$	
(F)	Service Disabled Veteran-Owned Small Business Goal met?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	Negotiated Contract Percentage Goal	%	
	Negotiated Contract Dollar Goal	\$	
	Cumulative Actual Percentage Performed	%	
	Cumulative Actual Dollar Performed	\$	

FINAL SUBCONTRACTING PERFORMANCE EVALUATION REPORT (cont'd)

If ANY answer to the above questions is "NO", please explain why goal(s) was/were not met. Give corrective action taken by the Administrative Contracting Officer and the contractor to meet the goal(s). (If necessary use reverse side).

Name of Contracting Officer/Administrator:
Telephone Number:

Signature

Date

CHAPTER 10

SMALL DISADVANTAGED BUSINESS ASSISTANCE PROGRAM

A. *Background*

The Small Disadvantaged Business (SDB) Assistance Program is best understood as a full and open competition assistance tool for SDBs. In order to obtain the benefits of the program, an SDB must be certified as such by the Small Business Administration (SBA) or a Private Certifier. The Federal Acquisition Regulation (FAR), Part 19.304 requires that small disadvantaged business concerns must be certified by the Small Business Administration (SBA) to be eligible to receive a benefit as a prime or subcontractor based on its disadvantaged status. The certification period for all small disadvantaged business concerns is three years. All small disadvantaged businesses that wanted to claim their status when the program first began, had to be certified by October 1, 1999. 8(a) concerns automatically qualify as SDBs based on the fact that they have already undergone an extensive review by the SBA concerning social and economic disadvantage.

The contracting officer may accept an Offeror's representation that it is an SDB concern for general statistical purposes. However, certification is mandatory for SDBs to receive the benefits of this program. The provisions at FAR 52.219-1, Small Business Program Representations, or FAR 52.212-3(c)(2), Offeror Representations and Certifications - Commercial Items, is used to collect SDB data for general statistical purposes.

B. *RESERVED*

C. *Small Disadvantaged Business Participation Program (Evaluation Factor)*

Two mechanisms are addressed in Federal Acquisition Regulation (FAR) Part 19.12, Small Disadvantaged Business Participation Program, which are best described as subcontracting assistance tools for SDBs. These two mechanisms are: (a) an evaluation factor or sub-factor for the participation of SDB concerns in performance of the contract; and (b) an incentive subcontracting program for SDB concerns.

1. Evaluation factor or sub-factor.

The extent of participation of SDB concerns in performance of the contract, in the NAICS Major Groups (the first two digits of the NAICS Code) as determined by the Department of Commerce shall be evaluated. The listing of the industries eligible for the evaluation factor or sub-factor can be found on the Internet at http://www.arnet.gov/References/sdbadjust_link.html.

Participation in performance of the contract includes joint ventures, teaming arrangements, and subcontracts. Credit under the evaluation factor or sub-factor is not available to SDB concerns that receive a price evaluation adjustment under FAR Subpart 19.11. If an SDB concern waives the price evaluation adjustment at FAR Subpart 19.11, participation in performance of that contract includes the work expected to be performed by the SDB concern at the prime contract level.

The extent of participation of SDB concerns in performance of the contract in the authorized NAICS Major Groups shall be evaluated in competitive, negotiated acquisitions expected to exceed \$500,000 (\$1,000,000 for construction). The extent of participation of SDB concerns in performance of the contract in the authorized NAICS Major Groups shall not be evaluated in (1) Small business set-asides and HUBZone set-asides; (2) 8(a) acquisitions, (3) Negotiated acquisitions where the lowest price technically acceptable source selection process is used; or (4) Contract actions that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

In developing an SDB participation evaluation factor or sub-factor, agencies may consider a) The extent to which SDB concerns are specifically identified; b) The extent of commitment to use SDB concerns (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones); c) The complexity and variety of the work SDB concerns are to perform; d) The realism of the proposal; e) Past performance of offerors in complying with subcontracting plan goals for SDB concerns and monetary targets for SDB participation; and f) The extent of participation of SDB concerns in terms of the value of the total acquisition. The factor or sub-factor must be included in Section M and must be point scored. The amount of points given and language of the factor or sub-factor shall be individually tailored to fit the acquisition and should be developed in conjunction with the bureau Small Business Specialist.

The solicitation shall describe the SDB participation evaluation factor or sub-factor. The solicitation shall require an SDB offeror that waives the SDB price evaluation adjustment in the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, to provide with its offer a target for the work that it intends to perform as the prime contractor. The solicitation shall state that any targets will be incorporated into and become part of any resulting contract. Contractors with SDB participation targets shall be required to report SDB participation. A sample form used to capture the target data is attached at Appendix 10-1.

When an evaluation includes an SDB participation evaluation factor or sub-factor that considers the extent to which SDB concerns the extent to which SDB concerns are specifically identified, the SDB concerns considered in the evaluation shall be listed in the contract, and the contractor shall be required to notify the contracting officer of any substitutions of firms that are not SDB concerns.

2. Incentive subcontracting with small disadvantaged business concerns

The contracting officer may encourage increased subcontracting opportunities in the NAICS Major Groups as determined by the Department of Commerce for SDB concerns in negotiated acquisitions by providing monetary incentives. Monetary incentives shall be based on actual achievement as compared to proposed monetary targets for SDB subcontracting. The incentive subcontracting program is separate and distinct from the establishment, monitoring, and enforcement of SDB subcontracting goals in a subcontracting plan.

Appendix 10-1

Summary Sheet for Cumulative Target NAICS SDB Data by Category

(Note: All Summary Data shown on this sheet must reflect data for Base Year Performance and all option years.)

SUMMARY DATA:

Category I - Prime Contractor Target NAICS SDB Costs:	
Total Estimated Dollar Value of Category I Costs in Target NAICS Codes	\$ _____
% of Total Estimated Contract Costs	_____ %
Category II - Joint Venture/Partnerships/Team Members Target NAICS SDB Costs:	
Total Dollar Value of Category II Costs In Target NAICS Codes	\$ _____
% of Total Estimated Contract Costs	_____ %
Category III - Subcontractor(s) Target NAICS(s) SDB Costs:	
Total Dollar Value of Category III Costs In Target NAICS Codes	\$ _____
% of Total Estimated Contract Costs	_____ %
Total Estimated Dollar Value of Category I, Category II, and Category III costs shown above	\$ _____
The total of Category I, Category II, and Category III costs shown above represent _____ % of total Estimated Contract Costs	_____ %

CHAPTER 11

TREASURY'S MENTOR-PROTÉGÉ PROGRAM SUCCESS PARTNERSHIPS

A. BACKGROUND

BusinessLINC - Business Learning, Information, Networking, and Collaboration - was launched to coordinate and encourage business-to-business linkages that may improve the economic competitiveness of smaller firms, including those located in economically distressed areas. The initiative's broad goal was to encourage more private sector business-to-business relationships in order to accelerate the success of business ventures.

B. SCOPE

Success Partnerships is designed to motivate and encourage firms to assist small businesses (SB), including HUBZone small businesses (HUBZone), small disadvantaged businesses (SDB), women-owned small businesses (WOSB), veteran-owned small businesses (VOSB), and service disabled veteran-owned small businesses (SDVOSB). The program is also designed to improve the performance of Department of the Treasury contracts and subcontracts, foster the establishment of long-term business relationships between these entities and Treasury prime contractors, and increase the overall number of these entities that receive Treasury contract and subcontract awards.

Phase I began in March 1999 under Procurement Instruction Memorandum (PIM) 99-6. Phase I consists of a Treasury/SBA partnership in which firms already designated by the SBA as 8(a) contractors serve as Treasury prime contractors, and another firm, typically a much larger firm, would mentor the 8(a) prime contractor.

Phase II of *Success Partnerships* encourages agreements between large or small prime contractors who act as mentors, and eligible small business proteges. Phase III of *Success Partnerships* is Treasury's participation in the HUBZone program which was effective October 1, 2000. The HUBZone program encourages Federal procurement from small businesses located in economically distressed areas. The Service Disabled Veteran Owned Small Business Program was also incorporated as a part of Phase III.

C. TREASURY BENEFITS

Benefits to the Department of the Treasury include, but are not limited to: acquiring an expanded base of qualified small businesses; obtaining more competitive pricing on procurement opportunities resulting in cost savings; and achieving a potential increase in small business program goal accomplishments

D. PHASE I (FISCAL YEAR 1999)

1. Purpose

Phase I of the program featured a Treasury/SBA partnership to use the 8(a) program and SBA's mentor-protege program for developing 8(a) firms. Phase I was implemented through a Memorandum of Understanding between Treasury and SBA. The SBA/Treasury *Success Partnerships* Phase I was designed to encourage approved mentors to provide various forms of assistance to eligible participants as subcontractors to protégé prime contractors. This assistance may take the form of technical and/or management assistance; financial assistance in the form of equity investments and/or loans, as well as assistance in performing prime contracts with Treasury in the form of joint venture arrangements. The purpose of the SBA/Treasury *Success Partnerships* relationship was to enhance the capabilities of small companies, and to improve their ability to compete successfully for contracts with Treasury. Primarily, Phase I serves as a prime contracting assistance tool.

2. Outcome

Program performance for Phase I was measured by: (a) an increase in the quality and scope of the technical capabilities of the protege firm; (b) An increase in the number and dollar value of contract and subcontract awards to protege firms since the time of their entry into the program (under Treasury contracts, contract awards by other Federal agencies and commercial contracts.); and (c) An increase in protege contracting and subcontracting activity in industry categories in which these firms have not traditionally participated.

In accordance with SBA's procedures, the 8(a) protege firm submit to SBA an evaluation of its mentor-protege relationships as part of its annual business plan with a copy to Treasury's Office of Small Business Development.

3. Treasury Bureau Responsibilities under Phase I

Treasury bureaus identified requirements that were reserved exclusively for participants approved by SBA's mentor-protege program, after appropriate market research and advanced acquisition planning, including 8(a) procurements awarded under simplified acquisition procedures, 8(a) sole source procedures, and 8(a) competitive procedures.

A listing of current SBA approved 8(a) mentor-protege agreement participants can be found on SBA's website or by contacting the bureau small business specialist for a hard copy listing.

E. PHASE II (FISCAL YEAR 2000)

1. Purpose

Phase II of *Success Partnerships* encourages agreements between large or small prime contractors who act as mentors, and eligible small business proteges. Phase II is implemented through a change to the Department of the Treasury Acquisition Regulation (DTAR) and through the program guide at the end of this chapter of the Small Business Handbook. Proposals submitted by *Success Partnerships* teams in response to a Treasury solicitation will be eligible for some evaluation points as part of the subcontracting plan evaluation in accordance with applicable SBA subcontracting regulations. A source selection evaluation factor or sub-factor may be added to benefit small disadvantaged businesses (SDBs) in competitive negotiated procurements in the NAICS Major Groups as provided in federal procurement changes effective January 1, 1999. Primarily, Phase II serves as a subcontracting assistance tool.

2. Outcome

Program performance for this phase is measured by: (a) An increase in the quality and scope of the technical capabilities of the protege firm, (b) An increase in the number and dollar value of contract and subcontract awards to protege firms since the time of their entry into the program (under Treasury contracts, contracts awarded by other Federal agencies and commercial contracts), and (c) An increase in protege contracting and subcontracting activity in industry categories in which those firms have not traditionally participated. Additionally, a written "lessons learned" report will be required from mentor-protege participants.

F. PHASE III (FISCAL YEAR 2001)

1. Purpose

Phase III of *Success Partnerships* was Treasury's participation in the HUBZone program, effective October 1, 2000, and the Service Disabled Veteran Owned small business program (SDVOSB) made effective during 2001. The HUBZone program encourages Federal procurement from small businesses located in economically distressed areas and procurement from Service Disabled Veteran Owned small businesses. In Phase III, Phases I and II procedures continue with an emphasis placed on firms located in HUBZones and SDVOSBs.

2. Outcome

Program performance for this phase will be measured by: (a) An increase in the quality and scope of the technical capabilities of protege firms that are SDVOSB or located in HUBZones, (b) An increase in the number and dollar value of contract and subcontract awards to protege firms that are SDVOSB or located in HUBZones since the time of their entry into the program (under Treasury contracts, contracts awarded by other Federal agencies and commercial contracts), and (c) An increase in protege contracting and subcontracting activity in industry categories in which those firms have not traditionally participated.

Phase I is an on-going process with SBA. Phases II and III, now in effect, may be implemented as follows:

THE TREASURY MENTOR-PROTEGE PROGRAM (PHASES II and III)

SCOPE

The Mentor-Protege Program is designed to motivate and encourage firms to assist small businesses (SB), including HUBZone small businesses (HUBZone), small disadvantaged businesses (SDB), women-owned small businesses (WOSB), veteran-owned small businesses (VOSB), and service disabled veteran-owned small businesses (SDVOSB) in enhancing their capabilities. The program is also designed to perform Department of the Treasury contracts and subcontracts, foster the establishment of long-term business relationships between these entities and Treasury prime contractors, and increase the overall number of these entities that receive Treasury contract and subcontract awards.

DEFINITIONS

(a) **Small Business (SB)**, 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 in their primary NAICS code under the criteria and size standards in 13 CFR Part 121.

(b) **HUBZone**, means a small business concern that appears on the List of Qualified HUB Zone Small Business Concerns maintained by the SBA.

(c) **Small Disadvantaged Business (SDB)**, means a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by Federal Acquisition Regulation (FAR) 19.001.

(d) **Women-Owned Small Business (WOSB)**, means a small business concern where ownership and controlling interest (at least 51%) in the company is held by a woman or women as defined by FAR 19.001.

(e) **Veteran-Owned Small Business (VOSB)**, means a small business concern which is at least 51 percent owned by one or more veterans; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more veterans; and whose management and daily business operations are controlled by one or more veterans.

(f) **Service Disabled Veteran-Owned Small Business (SDVOSB)**, means a veteran-owned small business with a service-related disability as defined by the Veteran's Administration.

(g) **Mentor**, means a prime contractor that elects, on a particular contract, to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé. Mentors must be deemed eligible as described in 1019.202-70.7.

(h) **Protégé**, means a small business as defined in paragraphs (a) through (d) above who is the recipient of developmental assistance pursuant to a mentor-protégé arrangement on a particular contract. Proteges must be deemed eligible as described in 1019.202-70.8.

(i) **OSBD** means the Office of Small Business Development, designated by the Department of the Treasury, Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) to assist and advise small, small disadvantaged, and women-owned small business concerns on procedures for doing business with Treasury.

NON-AFFILIATION

For purpose of the Small Business Act, a protégé firm is not considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in DTAR 1019.202-70.13 from such mentor firm under the program.

GENERAL POLICY

(a) Eligible business prime contractors, not included on the “Parties Excluded from Procurement Program” list that approved as mentor firms may enter into agreements with eligible proteges, as defined in DTAR 1019.202-70.02. Mentors provide appropriate developmental assistance to enhance the capabilities of proteges to perform as contractors and/or subcontractors.

(b) A firm’s status as a protégé under a Treasury contract shall not have an effect on the firm’s eligibility to seek other prime contracts or subcontracts.

INCENTIVES FOR PRIME CONTRACTOR PARTICIPATION

(a) Under the Small Business Act, 15 U.S.C. 637 (d) (4) (E), Treasury is authorized to provide appropriate incentives to encourage subcontracting opportunities for small businesses consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurement. FAR 19.202-1(d) provides additional guidance.

Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance (if any) under an existing arrangement, may be considered by the Contracting Officer in:

- (1) evaluating the quality of a proposed subcontracting plan under FAR 19.704-5;
and
- (2) assessing the prime contractor’s compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705-5(a)(1).

Mentor-Protégé arrangements may provide the Government with greater assurance that a protégé subcontractor will be able to perform under the contract than a similarly situated non-protégé subcontractor.

(b) OSBD Mentoring Award. A non-monetary award will be presented (annually or as often as appropriate) to the mentoring firm providing the most effective developmental support of a Protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Director, Office of Small Business Development.

MEASUREMENT OF PROGRAM SUCCESS

The success of the Treasury Mentor-Protégé program will be measured by:

- (a) The increase in the number and dollar value of contracts awarded to protégé firms under Treasury Department contracts from the date the protégé enters the program.
- (b) The increase in the number and dollar value of contract and subcontract awarded to the protégé under other Federal agencies and commercial contracts.
- (c) The increase in the technical, managerial, financial or other capabilities of the protégé firm, as reported by the protégé, and the developmental assistance provided by the mentor firm.
- (d) An increase in the quality of the technical capabilities of the protégé firm.

MENTOR FIRMS

A mentor firm may be either a large or small business, eligible for award of a Government contract that can provide developmental assistance to enhance the capabilities of proteges to perform as subcontractors. Mentors will be encouraged to enter into arrangements with proteges in addition to firms with whom they have established business relationships.

PROTÉGÉ FIRMS

- (a) Eligibility. A protégé must be:
 - (1) A SB, HUBZone, SDB, WOSB, VOSB, or SDVOSB as those terms are defined in 1019.202-70.2;
 - (2) Small in the NAICS code for the services or supplies to be provided by the protégé under its subcontract to the mentor; and
 - (3) Eligible for receipt of government contracts.

- (b) Except for SDB firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential proteges that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.
- (c) Proteges may have multiple mentors. Proteges participating in mentor-protégé programs in addition to the Treasury program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

SELECTION OF PROTÉGÉ FIRMS

- (a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in DTAR 1019.202.70.7(b).
- (e) Mentors may have multiple proteges.
- (c) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with the FAR and the Small Business Administration regulations.

APPLICATION AND AGREEMENT PROCESS FOR MENTOR PROTÉGÉ TEAMS TO PARTICIPATE IN THE PROGRAM

- (a) Firms interested in becoming a mentor firm may apply in writing to the Department of the Treasury OSBD. The application (see Appendix 11-1) will be evaluated based upon the description of the nature and extent of technical and managerial support proposed as well as the extent of financial assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support proposed.
- (b) A proposed mentor shall submit the information listed in DTAR 1019.202-70.12 for inclusion in a mentor-protégé agreement.

OSBD review of agreement.

- (a) OSBD will review the information to ensure that the mentor and protégé are eligible, the information listed in DTAR 1019.202-70.12 is complete, and will consult with the Contracting Officer on the adequacy of the proposed mentor-protégé arrangement. The OSBD review will be completed no later than 30 calendar days after receipt by OSBD.

(b) Upon completion of the review, the mentor may implement the developmental assistance program.

(c) The agreement defines the relationship between the mentor and protege firms only. The agreement itself does not create any privity of contract between the mentor or protégé and the Department of the Treasury.

DEVELOPMENTAL ASSISTANCE

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to—

- (1) Financial management;
- (2) Organizational management;
- (3) Overall business management/planning; and
- (4) Business Development; and
- (5) Technical assistance.

(b) Loans;

(c) Rent-free use of facilities and/or equipment;

(f) Property;

(e) Temporary assignment of personnel to protege for purpose of training; and

(f) Any other types of permissible mutually beneficial assistance.

OBLIGATION

(a) A mentor or protégé firm may voluntarily withdraw from the program. However, in no event shall such withdrawal impact the program mission and contract requirements under the prime contract.

(b) Annual reports shall be submitted by the mentor and protégé firms to the OSBD on program progress as it pertains to their mentor-protégé agreement. Large business mentors may submit these reports as part of their Small, HUBZone Small, Small Disadvantaged, Women-Owned Small, Veteran-Owned Small, and Service Disabled Veteran-Owned Small Business Plan submission in accordance with the due date on the SF295.

The Department of the Treasury will evaluate these reports by considering the following:

- (1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of proteges as suppliers to the Federal Government and to commercial entities;

(2) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protege as defined in the agreement;

(3) To what extent the protege has met the developmental objectives in the agreement; and

(4) To what extent the mentor firm=s participation in the Mentor-Protege Program resulted in the protege receiving contract(s) and subcontract(s) from private firms and agencies other than the Department of the Treasury.

The Department of the Treasury OSBD will submit the annual reports to the cognizant contracting officer regarding participating prime contractor(s) performance in the program. The cognizant contracting officer shall forward a copy of the annual reports to the bureau small business specialist for their files.

(c) Mentor and protege firms shall submit an evaluation to the OSBD at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the program, whichever comes first.

INTERNAL CONTROLS

(a) The OSBD will oversee the program and will work with the cognizant Contracting Officer to achieve the program's objectives.

(b) The Department of the Treasury may rescind approval of an existing Mentor-Protege agreement if it determines that such actions are in Treasury=s best interest. Recission shall be in writing and sent to the mentor and protege after approval by the Director, OSBD. Recission of an agreement does not change the terms of the subcontract between the mentor and the protégé or the prime contractor's obligations under its subcontracting plan.

SOLICITATION PROVISIONS, CLAUSES, AND CONTRACT GUIDANCE

The contracting officer shall insert the provision at DTAR 1052.219-73, Department of the Treasury Mentor-Protege Program, in all unrestricted solicitations exceeding \$500,000 (\$1,000,000 for construction) that offer subcontracting possibilities. The contracting officer shall insert the clause at DTAR 1052.219-75, Mentor Requirements and Evaluation, in all contracts where the prime contractor has signed a Mentor-Protégé Agreement with the Department of the Treasury.

1052.219-73 Department of the Treasury Mentor-Protege Program.

As prescribed in 1019.202-70, insert the following provision:

**DEPARTMENT OF THE TREASURY MENTOR PROTEGE PROGRAM
(January 2000)**

Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protege program. Mentor firms provide small business proteges with developmental assistance to enhance their business capabilities and ability to obtain federal contracts.

Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses, as defined in 13 CFR 121, 124, and 126.

Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance to aid proteges. Contractors interested in participating in the program are encouraged to contact the Department of the Treasury OSBD or the Bureau OSBD for further information.

(End of provision)

1052.219-75 Mentor Requirements and Evaluation

As prescribed in 1019.202-70, insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (January 2000)

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's OSBD at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the program, whichever occurs first. At the conclusion of each year in the mentor-protégé program, the prime contractor and protégé will formally brief the Department of the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreement.

(b) A mentor or protégé shall notify the OSBD and the Contracting Officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the program. A mentor firm shall notify the OSBD and the Contracting Officer upon receipt of a protégé's notice of withdrawal from the Program.

(End of clause)

Appendix 11-1

Department of Treasury Mentor-Protégé Program Application

A signed mentor-protégé application for each mentor-protégé relationship should be submitted to the Office of Small Business Development (OSBD) for approval. The application should be in narrative form and include, at a minimum, the following information in the format shown below:

1. Mentor Firm Information . *Provide the following:*

- Contact Name
- Position Title
- Address
- Telephone
- Fax
- E-Mail
- Homepage

2. Protégé Firm Information. *Provide the following:*

- Name of Firm
- Contact Name
- Position Title
- Address
- Telephone
- Fax
- E-mail
- Homepage

3. Eligibility. *Provide a statement certifying that the company is currently eligible pursuant to the following criteria below.*

A Small business concern that meets the definition at FAR 19.001, based on its primary NAICS code is eligible to be a protege firm. SBA Regulations/FAR Provision: FAR 19.001; 13 CFR Part 121; 13 CFR 124.1002

The protégé firm's **primary** NAICS code is_____.

The Protégé represents, for general statistical purposes that it is a ___small, ___very small, ___small disadvantaged, or ___8(a) business concern as defined above.

The Protégé should also identify the category in which its ownership falls: ___Black American, ___Hispanic American, ___Native American, ___Asian Pacific, ___Subcontinent Asian, or ___Individual concern, other than one of the preceding.

The Protégé represents that it ___is, ___is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone small business concerns maintained by the Small Business Administration.

The Protégé represents that it ___is, ___is not a women-owned small business concern.

The Protégé represents that it ___is, ___is not a veteran-owned small business concern.

The Protégé represents that it ___is, ___is not a service disabled veteran-owned small business concern.

4. Developmental Assistance Program. *Describe the developmental program for the protégé firm specifying type of assistance planned. Types of developmental assistance a mentor firm can provide to a protégé firm may include:*

- **Management guidance relating to-**
- **Financial management**
- **Organizational management**
- **Overall business management/planning and**
- **Business development**

- **Technical assistance**
- **Rent-free use of facilities and/or equipment**
- **Property**
- **Temporary assignment of personnel to the protégé firm for the purpose of training**
- **Loans; and**
- **Any other types of mutually beneficial assistance**

5. Milestones. Define milestones for providing the identified developmental assistance.

6. **Metrics.** In addition to the developmental assistance plan, provide factors to assess the protege firm's developmental progress under the Program.
7. **Subcontract Awards to Protégé(s).** The number and total dollar amount of subcontract awards made to the identified protégé firm(s) during the two preceding fiscal years (if any).

Total Subcontract Awards to Protégé(s)		
	Number	Dollar Amount
FY-		
FY-		

8. **Estimate of Cost.** Provide an estimate of the total cost of the developmental assistance.
9. **Program Participation Term.** State the period of time over which the developmental assistance will be performed.
10. **Potential Subcontracts.** Provide the anticipated dollar value and type of subcontracts that may be awarded to the protégé firm consistent with the extent and nature of mentor firm's business, and the period of time over which they may be awarded.
11. **Mentor Termination Procedures.** Describe the procedures for the mentor firm to notify the protégé firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw its participation in the Program.
12. **Protégé Termination From the Program.** Describe the procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement.
13. **Other Termination Procedures.** Describe the procedures for the mentor firm to terminate the mentor-protégé agreement for cause which provide:

The protégé firm shall be furnished a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination.

The protégé firm shall have 30 days to respond to such notice of proposed termination, and may rebut any finding believed to be erroneous and offer a remedial program.

Upon prompt consideration of the protégé firm's response, the mentor firm shall either withdraw the notice of proposed termination and continue the protégé firm's participation, or issue the notice of termination.

The mentor firm shall submit a plan for accomplishing work should the agreement be terminated.

14. **Signed Agreement.** Mentors and Proteges are asked to sign and date the agreement. The parties shall state they agree to comply with the obligations in DTAR 1019.202-70.13 and all other clauses and provisions governing the program. Titles of the individuals should also be included as shown in the following example:

<u>Mentor</u>	<u>Protégé</u>
_____ Printed Name	_____ Printed Name
_____ Signature	_____ Signature
_____ Title	_____ Title
_____ Date	_____ Date

CHAPTER 12

ANTI-BUNDLING STRATEGY

A. Background

Bundling (FAR 2.101) is defined as: (1) 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 (1)(i), (ii), and (iii) of this definition.

(2) "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.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

Therefore, bundling has the potential to significantly affect small business participation on Treasury procurements.

B. Procurement Considerations

FAR 7.107, Additional requirements for acquisitions involving bundling; states that:

(a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified (15 U.S.C. 644(e)(2)). Market research may indicate that bundling is necessary and justified if an agency would derive measurably substantial benefits (see 10.001(a)(2)(iv) and (a)(3)(vi)).

(b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to --

(1) Ten percent of the estimated contract value (including options) if the value is \$75 million or less; or

(2) Five percent of the estimated contract value (including options) or \$7.5 million, whichever is greater, if the value exceeds \$75 million.

(c) Without power of delegation, the service acquisition executive for the military departments, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent

for the civilian agencies may determine that bundling is necessary and justified when--

(1) The expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency's mission success; and

(2) The acquisition strategy provides for maximum practicable participation by small business concerns.

(d) 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.

(e) Substantial bundling is any bundling that results in a contract with an average annual value of \$10 million or more. When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must--

- (1) Identify the specific benefits anticipated to be derived from bundling;
- (2) Include an assessment of the specific impediments to participation by small business concerns as contractors that result from bundling;
- (3) Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;
- (4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and
- (5) Include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(f) The contracting officer must justify bundling in acquisition strategy documentation.

(g) In assessing whether cost savings would be achieved through bundling, the contracting officer must consider the cost that has been charged or, where data is available, could be charged by small business concerns for the same or similar work.

(h) The requirements of this section, except for paragraph (e), do not apply if a cost comparison analysis will be performed in accordance with OMB Circular A-76.

Pursuant to FAR 10.001, (c) if an agency contemplates awarding a bundled contract, the agency--

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR) or, if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located; and

(2) At least 30 days before release of the solicitation--

- (i) Must notify any affected incumbent small business concerns of the Government's intention to bundle the requirement; and
- (ii) Should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative.

C. STRATEGY

Based on these considerations, we can develop a strategy to help mitigate the effects of bundling. To that end, the contracting officer shall consider the following to the maximum extent practicable. Additionally, these same strategies shall be considered for all procurements using full and open competition procedures to support the small business policy stated at FAR 19.201:

1. Coordinate all projects that involve bundling with the SBA Procurement Center Representative assigned to Treasury.
2. For procurements expected to exceed \$100,000, if applicable, utilize the small disadvantaged business price evaluation adjustment (FAR 19.11) and the HUBZone price evaluation preference (FAR 19.13).
3. For procurements expected to exceed \$500,000, if applicable, consider:
 - a) small disadvantaged business price evaluation adjustment (FAR 19.11)
 - b) HUBZone price evaluation preference (FAR 19.13).
 - c) small disadvantaged business participation factor featuring a factor or subfactor in the evaluation criteria (FAR 19.12).
 - d) making the subcontracting plan a factor or subfactor in the evaluation criteria (FAR 19.7 and DTAR 1019.7).
 - e) consider the existence of a Treasury mentor-protégé agreement (DTAR 1019.202-70).
 - f) for large projects (whether bundling exists or not), include small business participation as a agenda item in pre-proposal conferences.