



**Department of Energy
Acquisition Regulation**

**No. 2005-08
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ACQUISITION LETTER

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

Subject: Small Business Programs

References:

FAR 7.107	Additional requirements for acquisitions involving bundling
FAR 19.201	General policy
FAR 19.202-1	Encouraging small business participation in acquisitions
FAR 19.302	Protesting a small business representation
FAR 19.306	Protesting a firm's status as a HUBZone small business concern
FAR 19.307	Protesting a firm's status as a service-disabled veteran-owned small business concern
FAR Subpart 19.5	Set-Asides for Small Business
FAR Subpart 19.7	The Small Business Subcontracting Program
FAR Subpart 19.8	Contracting with the Small Business Administration (The 8(a) Program)
FAR Subpart 19.11	Price Evaluation Adjustment for Small Disadvantaged Business Concerns
FAR Subpart 19.12	Small Disadvantaged Business Participation Program
FAR Subpart 19.13	Historically Underutilized Business Zone (HUBZone) Program
FAR Subpart 19.14	Service-Disabled Veteran-Owned Small Business Procurement Program
FAR 52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns
FAR 52.219-10	Incentive Subcontracting Program
FAR 52.219-22	Small Disadvantaged Business Status
FAR 52.219-24	Small Disadvantaged Business Participation Program-Targets
FAR 52.219-25	Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting
DEAR Subpart 919.5	Set-Asides for Small Business
DEAR Subpart 919.7	Subcontracting with Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns
DEAR Subpart 919.8	Contracting with the Small Business Administration (The 8(a) Program)
DEAR Subpart 919.70	The Department of Energy Mentor-Protégé Program
DEAR 970.1504-4-1	Make-or-buy plans
DEAR 970.5215-2	Make-or-buy plan
DOE Acquisition Guide Chapter 38	Task Order Contracting
13 CFR Chapter 1	Small Business Administration
OFPP Letter 99-1	Small Business Procurement Goals

Effective date of the Acquisition Letter (AL)

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

AL Expiration

This AL remains in effect until superseded or canceled. This AL supersedes AL-2004-03 (Small Business Programs, dated May 5, 2004), which is rescinded in its entirety.

Points of Contact

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Purpose of the AL

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

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

Background on Small Business

The Small Business Act contains a government-wide goal for participation by small business concerns of not less than 23 percent of the total value of all prime contract awards for each fiscal year as well as individual goals for women-owned small business concerns (5%), small disadvantaged business concerns (5%), service-disabled veteran-owned small business concerns (3%) and HUBZone small business concerns (3%). The Act further provides that agencies negotiate annual goals with the Small Business Administration (SBA). Information on the government-wide goaling guidelines for the small business preference programs can be found at <http://www.sba.gov/GC/goals/ggtotal71503.pdf>. DOE annually negotiates Department-wide goals with SBA. The Department establishes individual element goals using the Office of Small and Disadvantaged Business Utilization (OSDBU) goal documents and forms (found on the OSDBU website). The OSDBU also issues an annual Small Business Strategic Plan (http://smallbusiness.doe.gov/OSDBU_Strategic_Plan.pdf) that provides steps the Department will take to increase its small business awards.

Definitions

The definitions for the various preference programs (e.g., HUBZone) used in this Acquisition Letter can be found at FAR Subpart 2.1 (hyperlink: [arnet](#)).

Part I. Prime Contracting

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

Part II. Subcontracting with Small Business

- A. SUBCONTRACTING PLANS
- B. SUBCONTRACTING PROCEDURES

Part III. Other Considerations

- A. SECURITY CLEARANCES
- B. SMALL BUSINESS STATISTICS
- C. SECRETARY'S SMALL BUSINESS AWARDS

Part I. Prime Contracting**A. SMALL BUSINESS CONTRACTING PROCESSES**

Total small business set-asides. Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) 13.201(g)(1)(i) and \$25,000 as described in FAR 13.201(g)(1)(ii)), but not over \$100,000 (\$250,000 for acquisitions described in paragraph (1), and \$1 million for acquisitions described in paragraph (2), of the Simplified Acquisition Threshold definition at FAR 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the Contracting Officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. This obligation also applies to purchase card transactions. The Contracting Officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (2) award will be made at fair market prices.

Awards to 8(a) Firms. For procurements with an anticipated total value, including options, not exceeding \$5 million for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and \$3 million for all other acquisitions, if an 8(a) certified firm can be identified with the expectation that the award would be at a fair market price, an award may be made noncompetitively to an 8(a) firm. If the procurement is valued in excess of \$3 million (\$5 million for manufacturing) and two or more capable 8(a) firms can be so identified, the procurement also may be set aside for competition among 8(a) firms (see FAR 19.805-1(a)(2)). These 8(a) competitive thresholds do not apply to awards made to 8(a) businesses owned by tribal governments or Alaskan Native Corporations (ANCs). That is, awards valued in excess of the competitive threshold may be made to such entities on a sole source basis without regard to the estimated cost of the acquisition (see FAR 19.805-1). Contracting activities may make awards under the 8(a) program with Department of Energy/National Nuclear Security Administration (DOE/NNSA) Contracting Officers signing on behalf of Small Business Administration (SBA), in accordance with the 2003 partnership agreement with SBA. This delegated signature authority saves time and effort in completing the award between DOE and SBA and the subcontract between SBA and the selected 8(a) firm.

Small Business Competitiveness Demonstration. DOE participates in the Small Business Competitive Demonstration program established by the Small Business Competitiveness Demonstration Program Act of 1988. See FAR 19.1005 for the list of applicable NAICS Codes under the program. OSDDBU will monitor the attainment of their small business goals on annual basis. OSDDBU will report to the SBA the data for the previous fiscal year not later than January 31st of the next year.

Price evaluation preference for HUBZone small business concerns. Price evaluation preferences of 10 % shall be used to facilitate an award to HUBZone small business concerns in acquisitions conducted using full and open competition (see FAR 19.1307). The price evaluation preference shall not be used (1) in acquisitions expected to be less than or equal to the simplified acquisition threshold; (2) if price is not a selection factor so that a price evaluation preference would not be considered, or (3) if all fair and reasonable offers are accepted (*e.g.*, the award of multiple award schedule contracts).

Set-Asides for HUBZone Small Business Concerns. FAR 19.1305(b) requires that Contracting Officers set aside acquisitions exceeding the simplified acquisition threshold for competition restricted to HUBZone small business concerns if there is 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. Contracting Officers shall consider HUBZone set-asides before considering HUBZone sole source awards (see 19.1306) or small business set-asides (see Subpart 19.5).

Service-disabled veteran-owned small business set-aside procedures. FAR 19.1405 permits Contracting Officers to set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns if there is a reasonable expectation that offers will be received from two or more service-disabled veteran-owned small business concerns and award will be made at a fair market price. If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern (see FAR 19.1405(c)). The contracting officer shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406(a)).

B. SMALL BUSINESS PROCUREMENT TOOLS

Mentor-Protégé Agreements. A method of increasing the participation of small businesses in government contracting is the use of Mentor-Protégé agreements. DOE and SBA operate such programs. DOE Contracting Officers who seek to increase prime contract awards to small businesses can use the SBA Mentor-Protégé program. DOE prime contractors who seek to increase subcontract awards can use the DOE Mentor-Protégé program.

DOE Mentor-Protégé Program. DOE's Mentor-Protégé Program seeks to foster long-term business relationships between small business entities and prime contractors, and to increase the overall number of subcontract awards to small businesses. Mentors and protégés are encouraged to form teams to submit offers that will advance the protégé's competitiveness in the market.

The DOE Mentor-Protégé Program regulations are found in DEAR 919.70. This program is designed to encourage prime contractors to mentor small business concerns including (1) firms certified by SBA under Section 8(a) of the Small Business Act, (2) other small disadvantaged businesses, (3) women-owned small businesses, (4) Historically Underutilized Business Zone (HUBZone) businesses and (5) small business concerns owned and controlled by service disabled veterans. Historically Black Colleges and Universities (HBCU) and other minority institutions of higher learning may also serve as protégés.

SBA Mentor-Protégé Program. SBA's regulations (see 13 CFR 121.103(f)(3)(iii)) provide for a joint venture that may include a large business and an 8(a) firm that qualify as a Mentor-Protégé arrangement, respectively, under SBA's Mentor-Protégé Program (see 13 CFR 124.520). Such a joint venture will be recognized as small for the size standard corresponding to the NAICS code assigned to the procurement, and for purposes of 8(a) sole source procurements, as long as the participating Protégé 8(a) firm has not reached the dollar limit set as of the date that the requirement is accepted for the 8(a) program without taking into account whether the value of that award will cause the limit to be exceeded.

DOE, through the use of the 8(a) Mentor-Protégé Program is initiating a pilot project to establish 8(a) Mentor-Protégé arrangements in advance of specific contract opportunities. This effort will result in a pool of firms that can more quickly be approved by SBA as Joint Ventures eligible to bid on a specific project. Based on an agreement between the Department and SBA, when using the SBA's Mentor-Protégé program, the protégé firm must perform at least 25 percent of the cost for contract personnel with its own employees.

Teaming Arrangements. Another method of increasing the participation of small businesses in the award of DOE prime contracts is the use of teaming arrangements among small businesses. Such arrangements supplement the capabilities of small businesses to perform large, complex requirements. Teaming arrangements not only increase business opportunities for small businesses, but also expand the skill mix of the team.

A sample solicitation provision, *Guidance for Prospective Offerors - Impact of Teaming Arrangements on Small Business Status*, is attached to this AL. Inclusion of the provision is recommended for solicitations if teaming arrangements are contemplated, to advise prospective offerors on the impact of those arrangements on their small business status. It advises offerors of the Small Business Administration's affiliation rules and suggests they seek legal counsel if proposing a joint venture, subcontracting, or other form of teaming arrangement.

Multiple Award Contracts. Solicitations for multiple award contracts (MACs), as defined in FAR 2.101, should be structured in a manner that will allow small business firms an opportunity to compete for prime contracts, which then will allow them to compete for individual orders under the contracts. The following techniques should be applied when using MACs to fill program requirements: (1) Contracting Officers should work closely with program officials and their Small Business Program Manager to identify small business opportunities early in the acquisition planning process; (2) Business strategies such as teaming arrangements should be encouraged in an effort to maximize opportunities for small businesses. Teaming arrangements not only increase business opportunities for small businesses, but also expand the skill mix of the team in some cases; (3) MACs should be set-aside exclusively for competition among small businesses when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns; (4) If a total set-aside is not practicable, consideration should be given to identifying opportunities for a component of the statement of work to be set-aside for competition among small businesses; and (5) If a total or partial set-aside is not feasible, consideration should be given to reserving and specifying in the solicitation, a certain number of awards for small businesses.

Governmentwide Acquisition Contracts. A “Governmentwide Acquisition Contract” (GWAC), as defined in FAR 2.101, is a task-order or delivery-order contract for information technology established by one agency for Governmentwide use. GWACs also are referred to as “multi-agency” or “omnibus” contracts. GWACs often simplify the acquisition process for the authorizing agency as the contracting agency may maintain, and make available to the authorizing agency, their list of pre-screened contractors capable of performing certain types of requirements. The Department of Commerce’s GWAC is entitled “COMMERCE Information Technology Solutions” or “COMMITTS” and can be found online at: <http://www.commits.doc.gov/>.

C. SMALL BUSINESS MARKET RESEARCH

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

Central Contractor Registration Database. The Federal Government maintains a web site to access the Central Contractor Registration (CCR) database at <http://www.ccr.gov/>. It allows firms to register their company profile and allows Contracting Officers to search the database with results stratified by numerous small business qualifiers (e.g., WOSB, SDB, 8(a), HUBZone small business concern). The qualifiers can be combined to narrow the search results to very specific categories of small businesses having very specific qualifications. FAR 4.1103(a) states that unless the acquisition is exempt under FAR 4.1102, the contracting officer shall verify that the prospective contractor is registered in the CCR database before awarding a contract or agreement.

OSDBU Database. DOE has developed a customized Small Business (SB) database for use by its program offices and prime contractors. Small business profiles in this database are downloaded from the CCR and reflect small business concerns that have indicated an interest in working with DOE. Contractors on the OSDBU database are cross-referenced by company, contact name, size status, North American Industry Classification System (NAICS) code, and key words. Contractors that want to be included in the OSDBU database need to be registered with the CCR and must submit their Dunn and Bradstreet number to OSDBU.

The OSDBU data base has been developed to be accessed through DOE's forecast of Prime and Subcontracting Opportunities. DOE and facility management contractors (FMCs) small business program managers are encouraged to use the forecast found at <https://hqlnc.doe.gov/registration>.

Other Market Research Efforts. FAR 10.002(b)(2) includes additional ways agencies can determine industry's capabilities such as: (1) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements; (2) Reviewing results of recent market research for similar or identical requirements; (3) Publishing formal requests for information in appropriate technical or scientific journals or business publications; (4) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at www.contractdirectory.gov and other Government and commercial databases; (5) Participating in interactive, on-line communication among industry, acquisition personnel, and customers; (6) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources; (7) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line; and (8) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

D. SMALL BUSINESS ACQUISITION PLANNING

Implementation of Fiscal Year (FY) 2005 Legislative Provisions. Contracting Officers and Program Managers should review AL 2005-02 for information and guidance regarding the Department's implementation of the statutory provisions and legislative requirements at: [http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/AL2005-02/\\$File/AL2005-02.doc](http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/AL2005-02/$File/AL2005-02.doc)

This AL 2005-02 requires that DOE contracting officers, prior to the use of appropriated funds for the intended break-out of work under an M&O contract, shall contact the Director of the Office of Small Disadvantage Business Utilization (OSDBU) for a decision on the views of the SBA Representative. The OSDBU will obtain the views of the designated SBA representative with respect to "cost effectiveness, mission performance, security, safety, small business participation, and other legitimate acquisition objectives," and render an opinion on the views of the SBA representative to the contracting officer.

For NNSA, the AL requires that contracting officers, prior to the use of appropriated funds for the intended break-out of work under an M&O contract, shall contact the Service Center Small Business Program Manager (SCSBPM) to obtain the views of the SBA Representative with respect to "cost effectiveness, mission performance, security, safety, small business participation, and other legitimate acquisition objectives," and forward a recommendation on the views of the SBA representative, coordinated through OSDBU, for approval by the NNSA Head of the Contracting Activity (HCA), prior to rendering the approval decision to the contracting officer.

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

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

Contracting for Support Services. All support services contracts should be considered for award to small business concerns, unless findings from the SBA Procurement Center Representatives (PCR) and OSDBU support a HCA determination that (1) there are no responsible small business firms capable of performing the services, (2) mission critical reasons preclude the reservation of a requirement exclusively for small business concerns; or (3) a justification for other than full and open competition is approved in accordance with FAR 6.303. [Note: The support services requirements do not apply to NNSA.]

Contract Bundling. The consolidation of smaller contracts that have been performed, or could have been performed, by small business concerns into a single contract awarded to a large business may have detrimental effects on some small businesses. As a consequence, Congress enacted legislation to regulate the consolidation of contracts. If contract consolidation is otherwise meritorious, such consolidated procurement should present maximum practicable opportunities to small business in accordance with the policy stated in FAR 19.202(a). By definition, consolidated contracts awarded to small businesses are not bundled contracts. Likewise, M&O contracts are not bundled contracts. If a consolidated procurement is not set aside for small business, the Contracting Officer should rethink the acquisition strategy.

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

If the proposed acquisition strategy involves substantial bundling (i.e., any bundling that results in a contract with an average annual value of \$5 million or more), the Contracting Officer must include the following in acquisition strategy documentation: (1) the specific measurably substantial benefits or the criticality of bundling to the Department's mission; and (2) plans to preserve and promote small business participation as prime contractors and efforts to include small businesses as subcontractors (see FAR 7.107(e)). Contracting Activities are required to coordinate with the SBA Procurement Center Representative (SBA-PCR) on acquisition strategies or plans contemplating bundled awards at or above \$5 million

The OSDBU has been designated as the Department's focal point for the review of bundled acquisitions, excluding NNSA. DOE program offices intending to proceed with a bundled procurement must submit the acquisition to the OSDBU for review to ensure conformance with the statutory requirements regarding bundling, and to identify ways to maximize the participation of small businesses in the procurement. Should the OSDBU determine that the proposed bundling of a contract is not necessary and there is no agreement between the program office and the OSDBU about the need to bundle, the matter will be referred to the Deputy Secretary through the HCA and Senior Procurement Executive. The Deputy Secretary, without power of delegation, may determine that bundling is necessary and justified if: (1) the expected benefits do not meet the thresholds identified in this section, but are critical to mission success; and (2) the acquisition strategy provides for maximum practicable participation by small business concerns. [Note: This OSDBU bundling review procedure does not apply to NNSA.]

Evaluation Factor for Past Performance in Subcontracting. Plans to preserve and promote small business participation in a bundled contract might include teaming by small business for the prime contract and may include the following: a factor to evaluate past performance under previous subcontracting plans; and inclusion of the clause at 52.219-10, Incentive Subcontracting Program in the resulting contract.

Pre-bid and Pre-proposal Conferences. Contracting Officers are encouraged to hold pre-bid and pre-proposal conferences (see FAR 15.201) for major procurements if the procurement will be set-aside for small businesses.

Small Business Program Managers. Small Business Program Managers, designated by the HCA, should perform the following functions: (1) Participate in the planning of, and make recommendations as to set aside, for acquisitions over \$100,000. The review process should address small business categories areas which are goaled (HUBZone small business, small disadvantaged business, small business, service-disabled veteran-owned small business, and women-owned small business concerns); (2) Conduct the review before the issuance of the solicitation and document the results; (3) Maintain copies of the results for requirements exceeding \$1 million [\$100,000 applies to NNSA] ; (4) Maintain liaison with the small business community; and (5) Review all subcontracting plans prior to acceptance by the Contracting Officer.

Part II. Subcontract Awards to Small Business

HCA's must ensure that purchasing systems of contractors for the management and operation of major sites and facilities include small business outreach programs.

A. SUBCONTRACTING PLANS

Contracting Officers shall ensure: (1) that all M&O contractors, except small businesses, with contracts over \$500,000 (\$1 million if construction) have a small business subcontracting plan in place that has aggressive small business goals and (2) that subcontract reports, Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and (SF) 295, Summary Subcontract Report, are submitted in a timely and accurate fashion reporting the actual small business achievements. [Note: Once the Electronic Subcontracting Reporting System (eSRS) is operational, reporting will be done in eSRS and the current SF 294 and SF 295 will be eliminated. The SF294 will be replaced with the Individual Subcontracting Report. The SF295 will be replaced with the Summary Subcontracting Report.]

Every subcontracting plan should, at a minimum, support achievement of the agency-wide goals negotiated with the SBA by the OSDDBU. Subcontracting plans reflecting less than the agency-wide goals must be submitted through the OSDDBU to the HCA for approval/disapproval. OSDDBU will monitor compliance with subcontracting plans. [NOTE THESE REQUIREMENTS DO NOT APPLY TO NNSA.]

Contracting Officers, in consultation with Small Business Program Managers, shall meet periodically with directors of contractor purchasing to review the status of the contractor's performance against its small business subcontracting plan.

Responsibilities for report reviews will change with the eSRS. DOE anticipates that eSRS training will be available in August 2005. Concurrent with this training, OSDDBU plans to issue a Standard Operating Procedure addressing oversight responsibilities under the eSRS. Contracting Officers will be responsible for reviewing the Individual Subcontracting Reports against the subcontracting plans that pertain to their contracts. OSDDBU will have overall responsibility for the Summary Subcontracting Reports. OSDDBU shall ensure that the Small Business Program Managers review the Summary Subcontracting Reports for completeness and accuracy. The OSDDBU will also conduct periodic reviews of the contractor's performance against its small business subcontracting plans and will coordinate such reviews with the cognizant Contracting Officers and Small Business Program Managers.

B. SUBCONTRACTING PROCEDURES:

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

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

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

Service Disabled Veteran-Owned Small Business (SDVOSB) Set-Aside. Contractors responsible for the management or operation of sites and facilities may restrict competition to SDVOSB concerns if there is a reasonable expectation that two or more SDVOSB concerns will submit offers and that the award can be made at a fair market price.

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

DOE Mentor-Protégé Program. Contracting Officers should encourage prime contractors to enter into Mentor-Protégé agreements with small businesses. DOE regulations that provide for a Mentor-Protégé Program can be found at DEAR 919.70. DOE's Mentor-Protégé Program seeks to foster long-term business relationships between small business entities and prime contractors, and to increase the overall number of small business entities that receive contract and subcontract awards. Mentors recognized under the DOE Mentor-Protégé Program are authorized, subject to the best commercial practices and procedures required by DEAR 970.4402-2(d), to award noncompetitive subcontracts, of any dollar value, to their Protégés. Further, other site and facilities management contractors may award noncompetitive subcontracts to a Protégé of another DOE Mentor contractor if those awards are made at fair market prices. OSDDBU maintains a current listing of active Mentor-Protégé agreements.

Part III. Other Considerations

A. SECURITY CLEARANCES

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

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

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

Further information is contained in a pamphlet, *DOE's Security Requirements for Small Business Contractors*. It can be found at the bottom of the following web site:
<http://www1.pr.doe.gov/small.html>.

B. SMALL BUSINESS STATISTICS

Collecting and Reporting Small Business Contracting Information. The systems for collecting and reporting small business award information are the Federal Procurement Data System—Next Generation (FPDS-NG - *Prime contract award data*), and the Subcontract Reporting System (SRS - *prime contractor subcontracting award data*).

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

Improving the Accuracy of Small Business Information. HCAs should assure that proper quality control systems are in place to ensure the accurate reporting of small business data.

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

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

The Contracting Officer should refer to the SBA and the Office of the Inspector General any certification of small business status that is inaccurate and refer instances of misrepresentation of

small business status to the DOE/NNSA Procurement Executive for consideration of suspension/debarment.

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

Additional guidance on establishing subcontracting goals can be found in Acquisition Letter 2005-06, Small Business Procurement Goals, dated March 11, 2005.

C. SECRETARY'S SMALL BUSINESS AWARDS

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

Element Awards. (1) Award for the element that breaks out the greatest percent of small business awards from an existing facility management contract.

(2) Award for the element with the greatest percentage increase in awards to small business from the prior year.

(3) Award for the element with the highest percentage of diversity in its small business awards.

M&O Awards. (1) Award for the M&O with the most significant small business teaming arrangements.

(2) Award for the M&O with the greatest percentage increase in awards to small business from the past year.

(3) Award for the M&O with the highest percentage of diversity in its small business awards.

Small Business Program Manager Awards. (1) Award for the SB program manager who has made the most progress in promoting small business contracting at the HQ level.

(2) Award for the SB program manager who has made the most progress in promoting small business contracting at the field level.

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

Mentor-Protégé Award. Award for the most outstanding Mentor, Protégé or Mentor-Protégé team.

Attachment 1 to AL 2005-08

L. ## GUIDANCE FOR PROSPECTIVE OFFERORS - IMPACT OF TEAMING ARRANGEMENTS ON SMALL BUSINESS STATUS

(a) This procurement has been set aside for small business. In order to ensure that award is made to an eligible small business, prospective Offerors, in consultation with legal counsel, are encouraged to review the Small Business Administration's (SBA's) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 C.F.R. § 121). In particular, Offerors proposing a joint venture, subcontracting, or another form of teaming arrangement should review 13 C.F.R. § 121.103, "How does SBA determine affiliation?" prior to submitting a proposal.

(b) The SBA is the sole authority for making determinations of small business status for small business programs. Such determinations are binding on the Offeror and the Contracting Officer. Accordingly, a finding by the SBA of affiliation between an Offeror and its proposed team member(s) or subcontractor(s) may result in the Offeror being found to be other than a small business and therefore ineligible for contract award.

(c) Business concerns are considered to be affiliates of each other if either one directly or indirectly controls or has the power to control the other, or if another concern controls both. In determining whether affiliation exists, factors such as common ownership (stock ownership or options, convertible securities and agreements to merge), common management, and contractual relationships are considered. An Offeror will also be found to be affiliated with its subcontractor(s) if the Offeror is unusually reliant upon its subcontractors or if the subcontractor(s) will perform primary and vital requirements of a contract.

(d) The SBA has issued several decisions concerning its evaluation of affiliation of an Offeror and its proposed subcontractor(s). The following examples set forth characteristics that the SBA has reviewed in considering the question of affiliation and may assist prospective Offerors in developing any teaming arrangements and their proposals.

(1) The SBA considers whether proposed subcontracting, partnership, joint venture, or other teaming arrangements contain discrete descriptions of the tasks or work to be performed by each party. The SBA considers whether the Offeror or, if the Offeror is a joint venture or partnership, the joint venture participants or partners, perform the primary or vital portions of the Statement of Work. The SBA considers whether teaming arrangements clearly set forth the relationship between the parties, as well as the individual roles and responsibilities assigned.

(2) The SBA considers whether there is a clear separation of facilities, employees, and management (decision-making authority) between the Offeror and any entities with which it has teaming arrangements.

(3) The SBA considers the extent to which the Offeror directly employs Key Personnel (Program Manager, Project Manager, etc.).

(4) If the Offeror is an eligible small business prime contractor, the SBA considers whether the majority of the technical expertise resides with the Offeror. If the Offeror is an

eligible joint venture the SBA considers whether the majority of the technical expertise resides among the joint venture members.

(5) The SBA considers the Offeror's profit sharing arrangements with its proposed subcontractor or other entities.

(6) In reviewing affiliation between the Offeror and its proposed subcontractors or entities with which the Offeror has a teaming arrangement, SBA considers the previous contractual or business relationships between the Offeror and that entity.

Acquisition Letter 2005-08, Revision 1, dated 5/24/2006

This revision to Acquisition Letter (AL)-2005-08, Small Business Programs, expands the coverage and procedure for obtaining reviews by the Advanced Planning Acquisition Team (APAT) and the required Office of Small and Disadvantaged Business Utilization (OSDBU) review of all proposed acquisitions over \$3 million and provides guidance pertaining to the award of contracts to Alaska Native Corporations.

1. Add the following under Part I, Prime Contracting, paragraph A “SMALL BUSINESS CONTRACTING PROCESSES,” Awards To 8(a) Firms:

Alaska Native Corporations (ANCs) were created to settle land claims with Alaska Natives and foster economic development. In 1986, Congress passed legislation allowing ANCs to participate in the Small Business Administration’s (SBA) 8(a) program and extended special procurement advantages to 8(a) ANC firms. FAR 19.805(b) permits sole source 8(a) awards to concerns owned by ANCs.

DOE Contracting Officers are reminded to use care in the award and administration of ANC contracts, such as notifying SBA of contract modifications and monitoring the percentage of work that is subcontracted. Contracting Officers must ensure that such contracts are properly coordinated with DOE’s Small Business Program Managers, the Office of Small Disadvantaged Business Utilization; and the SBA, as appropriate.

2. Replace the following under Part I, Prime Contracting, paragraph D, “SMALL BUSINESS ACQUISITION PLANNING,” on page 8 of the AL:

Advanced Planning Acquisition Team.

The Department of Energy (DOE) has established an Advanced Planning Acquisition Team (APAT), comprised of the Office of Small and Disadvantaged Business Utilization (OSDBU), the Office of Procurement and Assistance Management (OPAM), the National Nuclear Security Administration (NNSA) Office of Acquisition and Supply Management, the Small Business Administration Procurement Center Representative (SBA-PCR), and DOE Headquarters or field offices. The purpose of the APAT is to review acquisition strategies of new procurements in the developmental stage. APAT review of proposed acquisitions will serve the purpose of identifying the practicable extent to which small business participation is feasible at the prime contracting level. APAT review will be conducted prior to the development and execution of a formal acquisition plan. The APAT's focus will be DOE's Facility Management Contracts (FMCs) and other large contracts of special interest to DOE.

The APAT will make recommendations

- for total small business set-aside of a contract,
- that identify portions of large statements of work that can be broken-out and reserved exclusively for small business prime contract participation,
- requiring the inclusion of the Departmental subcontracting goals in the RFP,

- on how offerors' past performance in achieving subcontracting goals can be made as an evaluation factor in the draft RFP,
- regarding work from existing contracts that can be reserved for small business subcontracting opportunities prior to FMC option exercises¹.

The APAT is strictly advisory in nature. The APAT will meet the first Wednesday of each month; however, ad hoc meetings may be convened as necessary.

The APAT review is separate and distinct from, and occurs prior to, the required OSDBU review of proposed acquisitions estimated to be over \$3 million and not recommended for small business set aside. The APAT will identify planned procurements early enough in the acquisition cycle to permit timely reviews. Program Managers may also prepare presentations requesting APAT reviews, if necessary. The APAT will provide its views and recommendations on a proposed acquisition strategy, which in turn must be considered by the Program Manager when developing the final Acquisition Plan. APAT recommendations will also be considered, as necessary, by the OSDBU when conducting its review of RFPs over \$3 million not set-aside for SB participation. While there is no particular format for submitting information to the APAT, the preferred approach is that the Associate OSDBU Director be notified by email or memorandum from the program manager that s/he wishes to discuss a proposed acquisition. That written notification should be brief and concise. The Program Manager will present the proposed procurement Acquisition Strategy to the APAT for discussion.

An APAT may also be convened to discuss proposed procurement legislation, regulations, prime and subcontract goaling processes, reporting and communication barriers, market survey improvements, and other small business issues.

3. Insert the following new paragraph under D, "SMALL BUSINESS ACQUISITION PLANNING," following the paragraph titled "Advanced Planning Acquisition Team:"

Review of Proposed Acquisitions Over \$3 Million not Set-aside for Small Business Concerns.

The OSDBU and the SBA-PCR shall review all proposed acquisitions estimated to be over \$3 million in value and not recommended for set aside to small business. This review covers all new acquisition requirements, including contracts, exercise of FMC options, and issuing orders against Federal Supply Schedules (FSS) and GWACS. While FSS acquisitions using the procedures prescribed in FAR 8.4 are not subject to the policies and procedures of FAR Part 19 (including small business set-aside requirements prescribed in subpart 19.5), it is DOE policy² that Contracting Officer's place FSS orders with small businesses to the maximum extent practicable in accordance with FAR 8.405-5(b). Accordingly, if the Contracting Officer determines that it is not feasible to target an FSS acquisition for small business participation, and the value of the FSS acquisition is expected to exceed \$3 million, the Contracting Officer shall

¹ The APAT will review option exercises of facility management contracts (FMCs) in order to (1) evaluate if subcontracting goals in the existing subcontracting plan are current and reflect the Departmental subcontracting goals, and (2) make recommendations of work that can be reserved for small business subcontracting opportunities.

² To the maximum extent practicable, FSS order competitions should be targeted to small business firms. Contracting Officers should work with requestors to identify three or more small businesses that hold relevant FSS contracts.

document the basis for this determination for review by OSDBU and the SBA-PCR in accordance with this section.

The Contracting Officer shall submit the following supporting documentation for OSDBU review:

- (1) DOE F 4220.2, SMALL BUSINESS REVIEW completed through Block No. 13,
- (2) Procurement Request (PR),
- (3) Draft Request for Proposals (RFP),
- (4) Acquisition Plan, and
- (5) Narratives from the Contracting Officer, Small Business Program Manager, Procurement Director, and the Small Business Administration's Procurement Center Representative (SBA PCR) or SBA District Small Business Specialist acquisition, as required by the instructions to DOE F 4220.2.

The preferred method of transmission of procurement packages to OSDBU is by e-mail, to small.business@hq.doe.gov .

The OSDBU shall complete its review within ten (10) business days after receipt of a complete acquisition package. Their review will include either a written analysis and decision that supports the draft RFP or recommendations to improve the participation of small business concerns. If unforeseen circumstances preclude meeting this timeframe, the OSDBU will negotiate a new review completion date with the Contracting Officer.