

# U.S. NUCLEAR REGULATORY COMMISSION

## **DIRECTIVE TRANSMITTAL**

TN: DT-94-07

**To:** NRC Management Directives Custodians

**Subject:** Transmittal of Management Directive 11.4, "NRC Small and Disadvantaged Business Program"

**Purpose:** Directive and Handbook 11.4 describe policies and procedures applicable to the NRC Small and Disadvantaged Business Program, and they implement the provisions of Public Law 100-656, Business Opportunity Development Reform Act. This directive supersedes Manual Chapter 5104 and the Memorandum of Understanding between the Director, Division of Contracts (DC), Office of Administration (ADM), and the Director, Office of Small Business and Civil Rights (SBCR).

**Office of Origin:** Office of Small Business and Civil Rights

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# ***NRC Small and Disadvantaged Business Program***

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## ***Directive***

***(Formerly  
MC 5104) 11.4***

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## Contents

<b>Policy</b> .....	1
<b>Objectives</b> .....	1
<b>Organizational Responsibilities and Delegations of Authority</b> .....	2
The Director, Office of Small Business and Civil Rights (SBCR) .....	2
The Director, Division of Contracts (DC), Office of Administration (ADM) ....	3
Office Directors and Regional Administrators .....	4
<b>Applicability</b> .....	4
<b>Handbook</b> .....	4
<b>References</b> .....	4



# U. S. Nuclear Regulatory Commission

Volume: 11 Procurement

SBCR

## **NRC Small and Disadvantaged Business Program Directive 11.4**

### **Policy (11.4-01)**

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to enter into contracts with the Small Business Administration (SBA) to foster the growth of disadvantaged business concerns so that these concerns may become self-sustaining competitive entities within a reasonable period.

### **Objectives (11.4-02)**

- To set forth the responsibilities and authorities of the primary participants in the award of contracts to small and disadvantaged businesses, women-owned businesses, and labor surplus area concerns in the NRC Small and Disadvantaged Business Program. (021)
- To set forth the basic requirements and procedures utilized in obtaining goods and services from small and disadvantaged businesses, women-owned businesses, and labor surplus area concerns. (022)
- To comply with and fully support Federal laws and policies emphasizing the award of contracts in support of socioeconomic goals and programs. (023)
- To ensure that goals established for the participation of small and disadvantaged business concerns realistically reflect the potential of these concerns to perform Government contracts and subcontracts under the program. (024)

## **Objectives**

(11.4-02) (continued)

- To establish and implement a comprehensive review and screening process for NRC procurement actions for potential award of contracts to small and disadvantaged businesses, women-owned businesses, and labor surplus area concerns. (025)

## **Organizational Responsibilities and Delegations of Authority**

(11.4-03)

### **The Director, Office of Small Business and Civil Rights (SBCR) (031)**

- Develops, coordinates, and administers the NRC Small and Disadvantaged Business Program as it pertains to Sections 8 and 15 of the Small Business Act, as amended. (a)
- Assists program officials in their effort to meet mission objectives and to establish goals, including Small Business Act Section 8(a) contracting, and represents NRC before Congress and Federal agencies on small business, Small Business Act Section 8(a) contracting, labor surplus, and women-owned business matters. (b)
- Implements, develops, and publishes procurement policy, procedures, and guidelines in conjunction with the Division of Contracts (DC), Office of Administration (ADM), and offices and regions as they relate to the NRC Small and Disadvantaged Business Program. (c)
- Establishes an annual NRC goals program, monitors the results of the program on a quarterly basis, and prepares reports of NRC's performance in making small and disadvantaged business awards in the program areas covered by this directive. (d)
- Reviews the individual NRC Form 400, "Request for Procurement Action (RFPA)," and makes appropriate written socioeconomic program recommendations. When a recommendation is made for a labor surplus area (LSA) set-aside, a small business set-aside, or a contract award to the Small Business Administration (SBA) under Section 8(a) of the Small Business Act, a source list will be

**The Director, Office of Small Business  
and Civil Rights (SBCR)  
(031) (continued)**

provided to DC, accompanied by documentation that will permit the contracting officer to determine whether the sources can fulfill the requirement. (e)

- Coordinates with office directors and regional administrators for early identification of requirements that offer potential for small business set-asides. (f)

**The Director, Division of Contracts (DC),  
Office of Administration (ADM)  
(032)**

- Provides a copy of each advance procurement plan to the Director, SBCR. Information contained in these plans is not releasable to contractors or prospective contractors. (a)
- Provides a copy of each RFP and the associated statement of work to the Director, SBCR, for review and recommendation. (b)
- Determines, through the contracting officer, the procurement method to be employed on each procurement action submitted to DC. These determinations must take into account the socioeconomic recommendations of the Director, SBCR. (c)
- Provides statistical information and data to help the Director, SBCR, establish annual goals for participation by eligible firms in programs under Sections 8 and 15 of the Small Business Act. (d)
- Submits appropriate prime and subcontractor socioeconomic statistical information for each quarter of the fiscal year to the Director, SBCR. (e)
- Provides, upon the request of the Director, SBCR, special analyses relating to NRC's performance in the socioeconomic program areas covered by this directive. (f)

**Volume 11, Procurement  
NRC Small and Disadvantaged Business Program  
Directive 11.4**

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**Office Directors and  
Regional Administrators  
(033)**

- Establish and maintain a strong and viable socioeconomic procurement program designed to meet NRC goals developed pursuant to the Small Business Act and to further the policies described in this directive. (a)
- Submit a Fiscal Year Office Procurement Plan to the Director, DC, and update the plan semiannually in accordance with the format for the plan specified in Management Directive 11.1, "NRC Acquisition of Supplies and Services." (b)
- Transmit specific requirements for procurement action to the appropriate contracting organization utilizing the format for the RFPA (NRC Form 400) and indicate in the appropriate block the office recommendation regarding socioeconomic set-aside. (c)
- Ensure that the technical and professional staff are informed of the benefits that can accrue to NRC through the proper use of small and disadvantaged business concerns in fulfilling NRC requirements. (d)

**Applicability  
(11.4-04)**

The provisions of this directive and handbook apply to and must be followed by all NRC headquarters and regional office personnel.

**Handbook  
(11.4-05)**

Procedures for the NRC Small and Disadvantaged Business Program are contained in Handbook 11.4.

**References  
(11.4-06)**

1. Annual Directive from the Small Business Administration (SBA) regarding Establishment of Procurement Preference Program Fiscal Year Goals.
2. NRC Management Directive 11.1, "NRC Acquisition of Supplies and Services" (formerly MC 5101).

## **References**

(11.4-06) (continued)

3. NRC Management Directive 9.24, "Organization and Functions, Office of Small Business and Civil Rights" (formerly MC 0142).
4. Small Business Act, as amended (15 U.S.C. 631 et seq. (1988)).
5. Office of Federal Procurement Policy (OFPP) Letter 80-2, Regulatory Guidance on Section 211 of Pub. L. 95-507, 45 FR 31028 (1980) (amendments to the Small Business Act).
6. Federal Acquisition Regulation (FAR) (48 CFR Subpart 19.8 (1993)).
7. "[Section] 8a Competition," 13 CFR 124.311 (1992).
8. Business Opportunity Development Reform Act of 1988, Pub. L. 100-656 (15 U.S.C. 631 note (1988)).



# ***NRC Small and Disadvantaged Business Program***

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***Handbook***  
*(Formerly  
Appendix 5104)* **11.4**

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## Contents

### Part I

<b>Introduction</b> .....	1
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### Part II

<b>Guidelines</b> .....	2
<b>General (A)</b> .....	2
<b>Contracting With the Small Business Administration (SBA) (B)</b> .....	4
<b>The Law (1)</b> .....	4
<b>Implementing Procedures (2)</b> .....	4
<b>Set-Asides for Small Businesses (C)</b> .....	5
<b>Subcontracting With Small and Disadvantaged Businesses (D)</b> .....	6
<b>General (1)</b> .....	6
<b>Procedural Guidance (2)</b> .....	7
<b>Screening Procedure Purposes (E)</b> .....	8
<b>Applicability (F)</b> .....	10
<b>Glossary</b> .....	11

## Part I

# Introduction

Because it is NRC's goal to place a fair proportion of its total purchase and contracts for supplies, research, and services with small and disadvantaged business concerns, agency program and procurement personnel should encourage these concerns to participate in the NRC Small and Disadvantaged Business Program. Office directors and regional administrators will make a concentrated effort to effectively implement this program within their respective offices and to achieve program goals negotiated by the Office of Small Business and Civil Rights (SBCR) and the Small Business Administration (SBA). (A)

This directive supersedes NRC Manual Chapter 5104 and the Memorandum of Understanding between the Director, Division of Contracts (DC), Office of Administration (ADM), and the Director, SBCR. (B)

## **Part II**

# **Guidelines**

### **General (A)**

Section 502 of the Business Opportunity Development Reform Act of 1988 amended the Small Business Act to require the President to establish annual Government-wide goals for the award of contracts to small and disadvantaged businesses. The small business goal must not be less than 20 percent of the total of all prime contract awards for the year. The goal for minority firms must not be less than 5 percent of the total of all prime contract and subcontract awards for the year. (1)

Office directors and regional administrators shall direct their technical and professional staffs to take all reasonable action to increase the level of participation by small and disadvantaged business firms on contracts for products or services arising from their offices. To achieve this goal, office directors and regional administrators will appoint a contact person to coordinate socioeconomic efforts with the Division of Contracts (DC), Office of Administration (ADM), and the Office of Small Business and Civil Rights (SBCR). This appointed representative will review capability brochures furnished to the offices and regions by SBCR and will coordinate meetings between firms and individuals desiring to do business with NRC and appropriate technical and professional office staff. Specific requirements, whether submitted to DC or still in an advance planning stage, must not be discussed with contractors or potential contractors. Specific requirements regarding procurement methods may be discussed with firms selected under Section 8 of the Small Business Act, as amended, with the approval of the Director, DC. (2)

Whether a procurement has been initially submitted by the office director or the regional administrator as a set-aside or a set-aside has been recommended to the office director or the regional administrator from a source list provided by SBCR, the source list must reflect firms with appropriate technical expertise. The office initiating the procurement must have input before any requirement

**General (A) (continued)**

will be set aside by DC. However, the final responsibility for selecting the procurement method belongs to the Director, DC, as provided in Section (032) of this management directive. (3)

NRC office directors and regional administrators, to the extent consistent with the best interests of the Government and in order to broaden the industrial base, should—(4)

- Attempt to locate qualified small and disadvantaged businesses by all appropriate methods, including assistance from SBCR, DC, and the Small Business Administration's (SBA's) Procurement Automated Source System (PASS), particularly when only a limited number of small and disadvantaged firms are on the bidder's mailing list. (a)

Note: PASS allows SBA personnel, other Government personnel, and private sector buyers across the country to identify and describe small businesses capable of fulfilling Government contract and subcontract requirements. SBCR maintains a computer terminal for accessing this system.

- Consider dividing proposed acquisitions of supplies and services into several parts so as to permit bidding on quantities less than the total requirement, allow the maximum time practicable for preparation and submission of bids and proposals, and establish delivery schedules that will encourage participation by small and disadvantaged businesses. (b)
- Examine each major procurement requirement to determine the extent to which small and disadvantaged business subcontracting opportunities exist. (c)
- Reserve all requirements for supplies or services that are subject to small purchase procedures for exclusive participation by small and disadvantaged business concerns if such capability for the requirement exists in the marketplace. (d)

Records of the total dollar value of contracts and subcontracts placed with small and disadvantaged business concerns, women-owned businesses, and labor surplus area firms during the fiscal year will be maintained by DC and reported through the NRC procurement reporting system to the Federal Procurement Data Center. Reports relating to the accomplishment of procurement preference goals must be reported to the SBA by SBCR. (5)

## **Contracting With the Small Business Administration (SBA) (B)**

### **The Law (1)**

In accordance with Sections 303(b) and 803(b)(3) of the Business Opportunity Development Reform Act of 1988, effective October 1, 1989, any requirements offered to the Small Business Act Section 8(a) Program over \$3 million for any Standard Industrial Classification (SIC) Code other than manufacturing shall be competed among Section 8(a) companies. If the requirement exceeds the competitive dollar threshold, SBA may accept the requirement for a sole-source Section 8(a) award if the Section 8(a) firm is owned by an Indian tribe or there is no reasonable expectation that at least two eligible and responsible Section 8(a) firms will submit offers at a fair market price.

### **Implementing Procedures (2)**

NRC office directors and regional administrators, the Director, SBCR, and the Director, DC, shall review and evaluate, on a continuing basis, all procurement requirements at the advance procurement planning (APP) stage and/or the request for procurement action (RFPA) stage to determine their suitability for referral to SBA for Section 8(a) consideration. Upon completion of this evaluation, in accordance with the process described in Section (E) of this part, SBCR will make a recommendation to the contracting officer concerning award to the SBA, if appropriate. If the contracting officer agrees with this recommendation, an offering letter will be transmitted to the SBA. The SBA is empowered to arrange for the performance of such contracts in accordance with Section 8(a) of the Small Business Act, as amended. (a)

If the contracting officer disagrees with the SBCR recommendation, an attempt will be made to reconcile the differences. If the differences cannot be resolved, the contracting officer will refer the matter to the Director, DC, and will specify the varying recommendations concerning the Section 8(a) award or the small business set-aside. The contracting officer must justify why the set-aside action is not a sound recommendation. (b)

## **Contracting With the Small Business Administration (SBA) (B) (continued)**

### **Implementing Procedures (2) (continued)**

The determination to approve or disapprove these recommendations shall rest with the Director, DC. However, in the event of disagreement between the Director, DC, and the Director, SBCR, the latter may within 5 work days following discussion with the Director, DC, seek a review by the Executive Director for Operations (EDO). The EDO's ruling is final in the review process. (c)

When a specific procurement has been designated as suitable for Section 8(a) contracting, the contracting officer shall send an offering letter to SBA. The letter will include the extent to which a Section 8(a) contract may be placed with SBA and the timeframe within which the prime and subcontract actions must be completed in order to satisfy NRC requirements. This offer represents a firm commitment by NRC to negotiate with the SBA, provided there is no material change in requirements, availability of funds, or other pertinent factors. (d)

Once a requirement has been offered to SBA as a Section 8(a) contract, it cannot be withdrawn before review by the Director, SBCR. Unless justified by supporting documentation, any future requirement that is essentially unchanged in content and scope should be considered for set-aside for disadvantaged businesses. It will be the SBA's responsibility to provide written certification to the NRC contracting officer of the firm's competency to perform the contract. (e)

## **Set-Asides for Small Businesses (C)**

Small business and labor surplus area (LSA) set-asides should be considered in the following order of precedence: (1)

- Total small business/LSA set-aside (a)
- Total small business set-aside (b)
- Partial small business set-aside (c)
- Total LSA set-aside (d)

## **Set-Asides for Small Businesses (C) (continued)**

Subject to the order of precedence specified in Section (C)(1) of this part, any individual procurement or class of procurements, regardless of dollar value, will be set aside for the exclusive participation by small business concerns when the action is determined to be in the interest of maintaining the Nation's full productive capacity or ensuring that a fair proportion of Government procurement is placed with small business concerns. (2)

Although this determination may be unilateral (NRC) or joint (SBA and NRC), unilateral determinations based upon the review of the APP or the RFPA and SBCR's recommendation to the contracting officer should be used as the basis for set-aside action. Based upon SBCR's recommendation that an individual procurement or class of procurements be set aside, the contracting officer shall follow the procedures outlined in Section (B) of this part. (3)

To aid LSAs and encourage increased hiring of disadvantaged individuals, NRC seeks to place contracts with LSA concerns if procurement objectives can be fulfilled and contracts can be awarded at prices no higher than those obtainable from non-LSA concerns. NRC also encourages prime contractors to place subcontracts with LSA concerns. The Director, SBCR, is responsible for the effective implementation of the LSA program in accordance with Section 15 of the Small Business Act. However, the Director, DC, has the authority for determining the final action to be taken with respect to individual procurement actions. (4)

Subject to any applicable preference for LSA set-asides, the entire amount of an individual or class procurement must be set aside exclusively for small businesses when the contracting officer determines there is a reasonable expectation that bids or proposals will be obtained from two or more responsible small business concerns so that contracts may be reasonably priced. In this regard, the past procurement history of the requirement is important. (5)

## **Subcontracting With Small and Disadvantaged Businesses (D)**

### **General (1)**

Requiring prime contractors to subcontract as much as possible with small and disadvantaged businesses will accomplish Government



## **Subcontracting With Small and Disadvantaged Businesses (D) (continued)**

### **General (1) (continued)**

policy to give these business concerns the maximum practical opportunity to participate in Federal contracts. If subcontracting opportunities for small and disadvantaged concerns exist, the contracting officer shall require large business prime contractors for contracts in excess of \$500,000 to develop an acceptable subcontracting plan if selected for contract award. SBCR will review the contractor's plan. (a)

The criteria for an acceptable subcontracting plan is set forth in the Office of Federal Procurement Policy (OFPP) Letter 80-2 and the Federal Acquisition Regulation (FAR) provision at 48 CFR 19.704 (1993). (b)

### **Procedural Guidance (2)**

The contracting officer shall forward a copy of each required subcontracting plan to SBCR for review and comment. The plan itself or accompanying documentation from DC must show the nature and scope of work proposed using small and disadvantaged businesses, the total dollar amount, and the percentage of work to be awarded to small and disadvantaged businesses. If SBCR determines that the plan submitted does not reflect the best effort by the offeror to award subcontracts to small and disadvantaged firms to the fullest extent consistent with the efficient performance of the contract, the contracting officer shall be notified in writing within 5 business days from the receipt of the subcontracting plan. The procedures set forth in Section (B) of this part must be followed. (a)

A copy of the final negotiated subcontracting plan must be transmitted to SBCR upon award of the prime contract. During the administration of the contract, DC will forward to SBCR those subcontract reports received from the contractor. SBCR will review subcontract reports, conduct site visits to contractor facilities (if necessary), and monitor all work awarded to small and disadvantaged business subcontractors to ensure that the contractor is meeting the terms of the contract. If the contractor is found to be in default or not following the requirements of the contract, SBCR will forward a written report to DC for appropriate action. (b)

## **Screening Procedure Purposes (E)**

Procedures should be developed to screen program requirements at the earliest possible stage in the procurement cycle to identify those requirements suitable for procurement through the Section 8(a) small business set-aside or LSA programs. The Small Business Act specifies that each proposed procurement subject to small purchase procedures must be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns with competitive market prices. (1)

Section 501 of the Business Opportunity Development Reform Act of 1988 amended the Small Business Act to require Government-wide support of the objectives of the small business program by requiring each executive agency with contract activity in excess of \$50 million in 1988 or in any year thereafter to prepare an annual forecast of expected contract opportunities that small businesses could perform. These forecasts must be made available to SBA and all small businesses upon request. (2)

To accomplish the purpose specified in Section (E)(1) of this part, the DC will forward for SBCR's review all advance procurement plans and RFPA requirements, including statements of work estimated to exceed dollar limits subject to small purchase procedures. (See blocks 4 and 9 of the RFPA.) This review will ascertain whether set-aside actions are appropriate to further national policies enunciated in this directive, such as those for small business set-asides, LSA set-asides, Section 8(a) awards, and subcontracting opportunities. (3)

SBCR will make initial recommendations to DC based on the fiscal year procurement plan received in response to DC initiatives. This effort should result in the selection of requirements for set-aside to the small business community before the RFPA stage. The earlier a set-aside action is considered, the greater the likelihood established goals can be met. The Director, SBCR, may also initiate a dialogue directly with NRC office directors and regional administrators upon receipt of the APP. (4)

DC branch chiefs will receive the original RFPA package at the same time SBCR is furnished a copy of the RFPA. SBCR will have 10 business days to provide written comments on the appropriateness of the set-aside opportunity to the Director, DC. Upon completion of SBCR's review, which is not to exceed 10 work days from the date of receipt from DC, the Director, SBCR, shall send a recommendation

## **Screening Procedure Purposes (E) (continued)**

to the cognizant contracting officer. SBCR will inform DC, in writing, if it does not intend to make a small business or a Section 8(a) recommendation. (5)

SBCR will furnish the names of small or disadvantaged firms with supporting documentation for use by the contracting officer in accomplishing the recommended action. Also, SBCR will include the applicable SIC Code for the firms recommended to DC. If documentation is not provided with the SBCR recommendation, the contracting officer is under no obligation to follow the SBCR recommendation. If DC desires to expedite an action and seek the names of small or disadvantaged firms before DC receives the RFP, SBCR will assist DC by accessing the SBA's PASS. In the event no written response is received by the contracting officer within 10 business days, the contracting officer may proceed with the contract process in the absence of an SBCR recommendation. However, even in the absence of an SBCR recommendation, the contracting officer should take positive action to meet national goals and objectives with respect to the placement of contracts with small and disadvantaged businesses, women-owned businesses, and LSA firms. (6)

The contracting officer shall inform SBCR of the final set-aside decision, including any disagreement with the recommended SIC Code or firms as submitted by SBCR. Any requirement covering a product or a service that has been previously set aside for small business or procured successfully through Section 8(a) will continue to be considered for a set-aside. (7)

If a disagreement occurs between the contracting officer and SBCR, the procedures specified in Section (B)(2) of this part must be followed. These procedures are applicable to all socioeconomic recommendations involving small business set-asides, LSA set-asides, Section 8(a) awards, or subcontracting opportunities. (8)

In addition to information and documentation specified in Section (032) of this directive, DC will routinely furnish SBCR with copies of finally approved subcontracting plans and copies of all critical correspondence or correspondence from any source on controversy generated by a proposed or a final action by NRC regarding a matter covered by this directive. The correspondence will be coordinated with the Director, SBCR. (9)

## **Applicability (F)**

As contracting officer authority is received, "regional administrator" should be substituted for "DC" in this handbook, as appropriate. Further, the provisions of this directive and handbook apply to regional offices only as contracting officer authority is delegated from the Director, DC.

## Glossary

**Economically Disadvantaged Individuals.** Socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired because of diminished capital and credit opportunities, as compared to others in the same business who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Small Business Administration (SBA) shall consider, among other things, the assets and net worth of these socially disadvantaged individuals. One may presume that the socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans, and other minorities, or any other individual found by the SBA to be disadvantaged pursuant to Section 8(a) of the Small Business Act.

**Indian Tribe.** Any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act).

**Labor Surplus Area.** A geographic area of a city, a State, or an Indian reservation that at the time of contract award is classified by the Secretary of Labor as a section of concentrated, persistent, or substantial unemployment or underemployment. Cities and States with classified sections of unemployment or underemployment, as well as eligible Indian reservations, are listed by the Department of Labor in its publication "Area Trends in Employment and Unemployment." Related terms are defined in 48 CFR 20.101.

**Offering Letter.** A formal letter from a procuring activity that offers a specific contract requirement to the Small Business Administration for award under the provisions of Section 8(a) of the Small Business Act.

**Small and Disadvantaged Business Program.** The program that refers to the legislative requirements imposed by the Small Business Act on the head of each agency to carry out the functions encompassed under Sections 8 and 15 of the Small Business Act. These

## **Glossary (continued)**

requirements include a directive that the agency will actively seek the award of Section 8(a) subcontracts to socially and economically disadvantaged firms; cooperate with the Small Business Administration to ensure that small business concerns receive fair and reasonable treatment; require submission of subcontracting plans from large business contractors on requirements in excess of \$500,000; promote individuals or class set-asides; award contracts and subcontracts in labor surplus areas on a priority basis; establish and meet dollar and percentage goals through contract awards to small and disadvantaged businesses in excess of the dollar threshold for small purchase procedures; award contracts to women-owned businesses; and reserve all requirements under small purchase procedures exclusively for small businesses.

**Small Business.** An independently owned and operated concern that is not dominant in its field and that can qualify under small business size criteria established by the Small Business Administration in 48 CFR 19.001.

**Small Business Act Section 8(a) Certified Firm.** A firm that has received a formal written notification of acceptance into the Section 8(a) program from the Small Business Administration (SBA) after satisfying the eligibility criteria established by the SBA.

**Small Business Concern Owned and Controlled by Socially and Economically Disadvantaged Individuals.** A small business that is a least 51 percent-owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and the management and daily business operations of which are controlled by one or more of these individuals.

**Socially Disadvantaged Individuals.** Individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group, without regard to their individual qualities.

## **Glossary (continued)**

**Woman-Owned Business.** A small business that is at least 51 percent-owned, -controlled, and -operated by a woman or women. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management of the business. Because women are not considered disadvantaged as a class, women-owned businesses can only be included in the Section 8(a) program based upon individual approval by the Small Business Administration.