

SUBPART 219.5—SET-ASIDES FOR SMALL BUSINESS

219.501 General.

(g) This repetitive set-aside procedure applies to DoD.

(S-70) When a product or service has been acquired successfully by a contracting office as a small disadvantaged business set-aside, all future requirements of that office for that product or service shall be acquired as small disadvantaged business set-asides, except those—

(1) Processed under small purchase procedures; or

(2) For which the contracting officer determines there is no reasonable expectation that the criteria for a small disadvantaged business set-aside can be met (see 219.502-2-70(a)).

219.502 Setting aside acquisitions.

219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for—

(1) Supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Architect-engineer services for military construction or family housing projects of \$85,000 or more (10 U.S.C. 2855), including indefinite delivery and indefinite quantity contracts if the value of all anticipated orders is expected to total \$85,000 or more.

219.502-2 Total set-asides.

(a) Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(i) Construction, including maintenance and repairs, under \$2 million;

(ii) Dredging under \$1 million; and

(iii) Architect-engineer services for military construction or family housing projects of under \$85,000.

219.502-2-70 Total set-asides for small disadvantaged business concerns.

(a) Except as provided in paragraphs (b) and (c), the contracting officer shall set aside an acquisition for small disadvantaged businesses when there is a reasonable expectation that—

(1) Offers will be received from at least two responsible small disadvantaged business (SDB) concerns who—

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(i) Can comply with the FAR 52.219-14 limitations on subcontracting; or

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation, will provide the supplies of a small business for contracts awarded during fiscal years 1994 and 1995, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335; or,

(iii) In the case of other SDB regular dealers, will provide the supplies of SDBs (except as provided in Alternate I of the clause at 252.219-7002, Notice of Small Disadvantaged Business Set-Aside).

(2) Award will be made at not more than ten percent above fair market price; and

(3) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

(b) Do not set aside acquisitions for SDBs when—

(1) The product or service has been successfully acquired as a small business set-aside (see FAR 19.501(g));

(2) The acquisition is for construction, including maintenance and repairs, and is under \$2 million, or is for dredging under \$1 million;

(3) The acquisition is for architect-engineer services or construction design for military construction projects, without regard to dollar value;

(4) The acquisition is reserved for the 8(a) program;

(5) The acquisition is processed under small purchase procedures; or

(6) The acquisition is for commissary or exchange resale items.

(c) Pursuant to 10 U.S.C. 2323(g), the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition and Technology), is responsible for determining whether use of small disadvantaged business (SDB) set-asides has caused a particular industry category to bear a disproportionate share of the contracts awarded by a particular contracting activity to achieve its SDB goal. Upon making a determination that a particular industry is bearing a disproportionate share, the OUSD(A&T)SADBU shall limit the use of total SDB set-asides in the affected industry category, at the contracting activity. This limitation shall not apply to solicitations that already had been synopsisized as SDB set-asides. Forward requests for a determination through agency channels to OUSD(A&T)SADBU and include—

(1) The standard industrial (SIC) code(s) affected;

(2) Supporting information to justify the request, including dollars and percentages by the contracting activity, under the affected SIC code(s) for the previous two fiscal years and current fiscal year to date for—

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- (i) Total awards;
- (ii) Total awards to small businesses;
- (iii) Total awards to SDBs; and
- (iv) Awards to SDBs under the SDB set-aside program.

219.502-3 Partial set-asides.

When a portion of an acquisition is to be set aside for small business concerns, except acquisitions for commissary or exchange resale, the contracting officer shall give small disadvantaged business concerns preferential consideration by using the procedures in 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.

219.502-4 Methods of conducting set-asides.

(b) Offers on a small disadvantaged business (SDB) set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

219.504 Set-aside program order of precedence.

- (b) The order of precedence for DoD is (except see 219.803(c) and 226.71)—
- (i) Total set-aside for small disadvantaged business concerns;
 - (ii) Total set-aside for small business concerns;
 - (iii) Partial set-aside for small business concerns with preferential consideration for small disadvantaged business concerns.

219.505 Rejecting Small Business Administration recommendations.

(b) The designee shall be at a level no lower than chief of the contracting office.

219.506 Withdrawing or modifying set-asides.

(a) Do not withdraw small disadvantaged business set-asides for reasons of price reasonableness unless the low responsive responsible offer exceeds fair market price by more than ten percent.

219.508 Solicitation provisions and contract clauses.

(d) Use the clause at 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the clause in FAR 52.219-7, Notice of Partial Small Business Set-Aside. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

(e) Use the clause at 52.219-14, Limitations on Subcontracting, also in small disadvantaged business set-asides.

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219.508-70 Solicitation provisions and contract clauses.

Use the clause at 252.219-7002, Notice of Small Disadvantaged Business Set-Aside, in solicitations and contracts for small disadvantaged business set-asides. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.