

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

252.219-7000 Small Disadvantaged Business Concern Representation (DoD Contracts).

As prescribed in 219.304(b), use the following provision:

SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (DOD CONTRACTS) (JUN 1997)

(a) *Definition.* “Small disadvantaged business concern,” as used in this provision, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. In general, 13 CFR Part 124 describes a small disadvantaged business concern as a small business concern—

(1) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or

(2) In the case of any publicly owned business, at least 51 percent of the voting stock is unconditionally owned by one or more socially and economically disadvantaged individuals; and

(3) Whose management and daily business operations are controlled by one or more such individuals.

(b) *Representations.* Check the category in which your ownership falls—

_____ Subcontinent Asian (Asian-Indian) American (U.S. citizen with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal)

_____ Asian-Pacific American (U.S. citizen with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, the Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru)

_____ Black American (U.S. citizen)

_____ Hispanic American (U.S. citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain, or Portugal)

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians, including Indian tribes or Native Hawaiian organizations)

_____ Individual/concern, other than one of the preceding, currently certified for participation in the Minority Small Business and Capital Ownership Development Program under Section 8(a) of the Small Business Act

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

_____ Other

(c) Complete the following—

(1) The offeror is _____ is not _____ a small disadvantaged business concern.

(2) The Small Business Administration (SBA) has _____ has not _____ made a determination concerning the offeror's status as a small disadvantaged business concern. If the SBA has made a determination, the date of the determination was _____ and the offeror—

_____ Was found by SBA to be socially and economically disadvantaged and no circumstances have changed to vary that determination.

_____ Was found by SBA not to be socially and economically disadvantaged but circumstances which caused the determination have changed.

(d) *Penalties and Remedies.* Anyone who misrepresents the status of a concern as a small disadvantaged business for the purpose of securing a contract or subcontract shall—

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment;
and

(3) Be ineligible for participation in programs conducted under authority of the Small Business Act.

(End of provision)

252.219-7001 Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns.

As prescribed in 219.508(d), use the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE WITH PREFERENTIAL
CONSIDERATION FOR SMALL DISADVANTAGED BUSINESS CONCERNS
(MAY 1995)

(a) *Definitions.*

“Labor surplus area,” as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

“Labor surplus area concern,” as used in this clause, means a concern that, together with its first tier subcontractors, will perform substantially in labor surplus areas.

“Perform substantially in labor surplus areas,” as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

“Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

“Small disadvantaged business concern,” as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

“United States,” as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) *General.* A portion of this requirement, identified elsewhere in this solicitation, has been set-aside for award to one or more small business concerns. After offers for the non-set-aside portion have been evaluated, negotiations will be conducted for the set-aside portion.

(1) Offers on the non-set-aside portion will be evaluated and award made in accordance with the other provisions of this solicitation.

(2) The set-aside portion will be negotiated, in accordance with this clause, with small business concerns which submitted offers on the non-set-aside portion.

(c) *Award of the set-aside portion.*

(1) Small business offerors on the non-set-aside portion will be selected for negotiation of the set-aside portion based on their standing—first in terms of group and then in terms of lowest responsive offer on the non-set-aside portion.

(i) Group 1—Small disadvantaged business concerns which are also labor surplus area concerns.

(ii) Group 2—Small business concerns which are also labor surplus area concerns.

(iii) Group 3—Other small disadvantaged business concerns.

(iv) Group 4—Other small business concerns.

(2) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s), except—

(i) Award of the set-aside portion to a small disadvantaged business concern will be at the lower of—

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(A) The price offered by the concern on the non-set-aside portion; or

(B) A price that does not exceed the award price on the non-set-aside portion by more than ten percent.

(ii) When award under the set-aside portion is to a concern offering a nonqualifying country end product and the highest unit price in the contract(s) is for a domestic or qualifying country end product, the set-aside price will be the higher of—

(A) The highest award price for a nonqualifying country end product under the nonset-aside; or

(B) A price which, when adjusted by the Buy American Act evaluation factor, would equal the highest unit price in the contract(s).

(iii) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated using the Buy American Act evaluation factor, the set-aside price will be awarded at the evaluated price of the non-qualifying country.

(iv) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated without the Buy American Act factor—

(A) And award was made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the highest unit price in the contract(s).

(B) And award was not made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the lower of—

(1) The highest unit price under the contract(s) as adjusted by the Buy American Act evaluation factor; or

(2) The lowest offered price for a domestic or qualifying country end product which was not awarded under the nonset-aside.

(v) Where the Trade Agreements Act applies to the nonset-aside portion, offers of eligible products will be treated as if they were qualifying country end products.

(vi) Discount terms used in evaluation of the highest non-set-aside award price will apply to the set-aside award price.

(3) If negotiations are not successful for any part of the set-aside portion, the set-aside will be dissolved for that part and the requirement will be resolicited.

(d) *Token offers.* The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(e) *Eligibility for preference as a labor surplus area concern.* Small business or small disadvantaged business offerors which claim preference for the set-aside portion as a labor surplus area concern, must list the labor surplus area location(s) of offeror or first tier subcontractors, which account for more than 50 percent of the contract price.

Name of Company:
Street Address:
City/County:
State:

(f) *Agreements.*

(1) If awarded a contract as a small disadvantaged business-labor surplus area concern or as a small business-labor surplus area concern, the offeror—

(i) Will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas.

(ii) If the contract is in excess of \$25,000, will submit a report to the Contracting Officer within 30 days after award that contains the following information—

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract and subcontract performance is taking or will take place.

(C) The total costs incurred and to be incurred under the contract in each of the labor surplus areas by the contractor and first tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas.

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)

ALTERNATE I (MAY 1994)

As prescribed in 219.508(d), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) A regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

252.219-7002 Notice of Small Disadvantaged Business Set-Aside.

As prescribed in 219.508-70, use the following clause:

NOTICE OF SMALL DISADVANTAGED BUSINESS SET-ASIDE (MAY 1995)

(a) *Definitions.*

“Small disadvantaged business concern,” as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

“United States,” as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) *General.* Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged businesses are nonresponsive and will be rejected.

(c) *Agreement.* A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)

ALTERNATE I (MAY 1994)

As prescribed in 219.508-70, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A small disadvantaged business regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

As prescribed in 219.708(b)(1)(A), use the following clause:

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(a) *Definitions.*

“Historically black colleges and universities,” as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institutions,” as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term “small disadvantaged business,” when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor’s small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded—

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program).

As prescribed in 219.708(b)(1)(B), use the following clause:

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JUN 1997)

(a) *Definition.* “Subcontract,” as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101-189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95-507.

(c) The Contractor shall submit Standard Form (SF) 295, Summary Subcontract Report, in accordance with the instructions on the form, except—

(1) One copy of the SF 295 and attachments shall be submitted to Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301-3061; and

(2) Item 14, Remarks, shall be completed to include semi-annual cumulative—

(i) Small business, small disadvantaged business, and women-owned small business goals; and

(ii) Small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled “Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns,” or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

252.219-7005 Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions.

As prescribed in 219.708(c)(1), use the following clause:

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

INCENTIVE FOR SUBCONTRACTING WITH SMALL BUSINESSES, SMALL DISADVANTAGED BUSINESSES, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, AND MINORITY INSTITUTIONS (NOV 1995)

(a) If the Contractor exceeds the small disadvantaged business, historically black college and university, minority institution goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

(b) The Contractor will not receive this incentive if the Contracting Officer determines that exceeding the goal was not due to the Contractor's efforts (e.g., a subcontractor cost overrun or award of subcontracts planned but not disclosed in the subcontracting plan). Determinations made under this paragraph are not subject to the Disputes clause.

(c) If this is a cost contract, the limitations in FAR Subpart 15.9 may not be exceeded.

(d) This clause does not apply if the subcontracting plan is a plant, division, or company-wide commercial items plan.

(End of clause)

ALTERNATE I (DEC 1991)

As prescribed in 219.708(c)(1), add the following paragraph (b) to the basic clause and renumber the existing paragraphs (b), (c), and (d) as (c), (d), and (e).

(b) If the Contractor exceeds the small business goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

252.219-7006 Notice of Evaluation Preference for Small Disadvantaged Business Concerns.

As prescribed in 219.7003, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS (JUN 1997)

(a) *Definitions.*

“Historically black colleges and universities,” as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institutions,” as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

“Small disadvantaged business concern,” as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

“United States,” as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) *Evaluation preference.*

(1) Offers will be evaluated by adding a factor of ten percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns, which have not waived the preference;

(ii) Offers from historically black colleges and universities or minority institutions, which have not waived the preference;

(iii) Otherwise successful offers of—

(A) Eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded;

(B) Qualifying country end products (as defined in the Defense Federal Acquisition Regulation Supplement clause at 252.225-7001, Buy American Act and Balance of Payments Program); and

(iv) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The ten percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the ten percent factor. The ten percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than ten percent.

(c) *Waiver of evaluation preference.* A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference, in which case the ten percent factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(d) *Agreements.*

(1) A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in the performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern.

(ii) Supplies (other than procurement from a regular dealer in such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern.

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced in the United States by small disadvantaged business concerns, historically black colleges or universities, or minority institutions.

(3) Upon request, a historically black college or university or minority institution offeror will provide the Contracting Officer evidence that it has been determined to be an HBCU or MI by the Secretary of Education.

(End of clause)

ALTERNATE I (JUN 1997)

As prescribed in 219.7003, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced in the United States by small business concerns, historically black colleges or universities, or minority institutions.

252.219-7007 Reserved.

252.219-7008 Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program.

As prescribed in 219.7204, use the following clause:

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS—CONSTRUCTION ACQUISITIONS—TEST PROGRAM (APR 1996)

(a) *Definitions.* As used in this clause—

“Historically black colleges and universities (HBCUs)” means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institutions” means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

“Small disadvantaged business (SDB) concern” means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.*

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.

(3) If the apparently successful offeror is not an SDB concern, offers will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(i) Offers from SDBs which have not waived the evaluation preference; and

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference.

(c) *Waiver of evaluation preference.* A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference.

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(d) *Agreements.* A small disadvantaged business, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause)

252.219-7009 Section 8(a) Direct Award.

As prescribed in 219.811-3(1), use the following clause:

SECTION 8(a) DIRECT AWARD (JUN 1998)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Memorandum of Understanding dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA is not a party to this contract. SBA does retain responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

*[To be completed by the Contracting Officer
at the time of award]*

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The Contractor agrees that—

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100-656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

252.219-7010 Alternate A.

ALTERNATE A (JUN 1998)

As prescribed in 219.811-3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

252.219-7011 Notification to Delay Performance.

As prescribed in 219.811-3(3), use the following clause:

NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)