

**U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)**

<b>MD 11.4</b>	<b>NRC SMALL BUSINESS PROGRAM</b>	<b>DT-14-13</b>
<i>Volume 11:</i>	Procurement	
<i>Approved by:</i>	Mark A. Satorius Executive Director for Operations	
<i>Date Approved:</i>	June 18, 2014	
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<i>Issuing Office:</i>	Office of Small Business and Civil Rights	
<i>Contact Name:</i>	Anthony Briggs 301-415-8506	
<b>EXECUTIVE SUMMARY</b>		
<p>Directive and Handbook 11.4 are being retitled and revised to address the mission and objectives of the Small Business Program, reflect updates and changes in small business-related laws, describe the Small Business Program’s statutorily mandated role in the acquisition process, and detail the Small Business Program’s acquisition review process.</p>		

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## **I. POLICY**

It is the policy of the U.S. Nuclear Regulatory Commission to provide the maximum practicable prime and subcontract opportunities to small businesses so as to foster economic and business development and maintain an innovative and competitive supplier base for the agency.

## **II. OBJECTIVES**

- Comply with and fully support Federal laws and policies emphasizing the award of contracts in support of small business goals, programs, and economic development initiatives.
- Establish and implement a comprehensive compliance review process for NRC procurement actions for potential award of contracts and subcontracts to small businesses; including businesses owned by the disadvantaged, women, veterans, service-disabled veterans, and businesses located in Historically Underutilized Business Zones.
- Ensure that goals established for the participation of small businesses reasonably reflect the potential of small businesses to support the mission and objectives of the agency and that the agency actively works towards the achievement of the Federal small business contract goals.

## **III. ORGANIZATIONAL RESPONSIBILITIES**

### **A. Chairman**

1. Has contracting authority which is delegated to the Executive Director for Operations. (See NRCAR 2001.601.)
2. Reviews quarterly small business contract performance reports.

### **B. Commission**

Reviews quarterly small business contract performance reports.

**C. Executive Director for Operations (EDO)**

1. Serves as the “agency head” or “head of the agency” for the purposes specified in the Federal Acquisition Regulation (FAR) (see Title 48 of the *Code of Federal Regulations* (CFR) 2002.10).
2. Ensures agency compliance with the Federal requirements imposed by the Small Business Act, as amended (15 U.S.C. 631 et seq.); the FAR (48 CFR Chapter 1); 13 CFR, “Business Credit and Assistance;” Executive Order 13360, “Providing Opportunities for Service-Disabled Veteran Businesses to Increase their Federal Contracting and Subcontracting;” Office of Management and Budget memoranda; and related policies, procedures, standards, and guidelines.

**D. Inspector General (IG)**

1. Conducts investigations and reports cases involving fraud, waste, and abuse to ascertain and verify the facts regarding contractor misconduct and the integrity of NRC programs and operations.
2. Investigates allegations of fraud within the procurement system.
3. Directs audits and evaluations to assess the management and conduct of NRC-administered or -financed programs and operations.
4. Audits procurement policies, procedures, processes, and payments.

**E. Director, Office of Small Business and Civil Rights (SBCR)**

1. Develops, coordinates, and administers the NRC Small Business Program as it pertains to Sections 8 and 15 of the Small Business Act, as amended.
2. Assists program officials in their effort to meet mission objectives through the use of capable and qualified small businesses.
3. Represents the NRC before Congress and Federal agency task forces on small business and economic development matters.
4. Implements, develops, and publishes small business procurement policy, procedures, and guidelines based on small business statutory authority in conjunction with the Acquisition Management Division (AMD), Office of Administration (ADM), and offices and regions as they relate to the NRC Small Business Program.
5. Coordinates with office directors and regional administrators for early identification of requirements that offer the potential for small business set-asides, sole source awards, partial set-asides, or any other incentivized mechanisms that foster the maximum practicable prime and subcontract opportunities for small businesses.

6. Reviews the NRC Small Business Review (NRC Form 827) and NRC Small Business Subcontracting Plan Review (NRC Form 828) forms to ensure compliance with small business laws and to make appropriate acquisition method recommendations that provide the maximum practicable prime and subcontract opportunities for small businesses.
7. Approves exceptions to the provisions of Handbook 11.4 unless the exceptions raise significant policy issues.

**F. Small Business Program Manager, Office of Small Business and Civil Rights (SBCR)**

Carries out and manages the activities listed under Sections 8 and 15 of the Small Business Act, as amended.

**G. Office Directors and Regional Administrators**

1. Evaluate the potential for small business participation during the acquisition phase of procurements.
2. Participate in agency-sponsored outreach and matchmaking events.
3. Ensure that staff participates in training events sponsored by the NRC Small Business Program.
4. Ensure that staff actively participate in thorough market research to evaluate the capability and capacity of the small business marketplace.
5. Ensure that the technical and professional staff is informed of the benefits that can accrue to the NRC through the proper use of small businesses to fulfill NRC requirements.
6. Support capability presentations with small businesses by ensuring that technical staff is present when requested.

**H. Director, Acquisition Management Division (AMD), Office of Administration (ADM)**

1. Provides a copy of small business and subcontracting plan review packages to the Small Business Program Manager through [smallbusiness@nrc.gov](mailto:smallbusiness@nrc.gov) for review and concurrence.
2. Determines, through the contracting officer, the acquisition method to be employed for each procurement action submitted to the AMD, ADM. These determinations must take into account the small business recommendations of the Director of SBCR and the Small Business Program Manager and ensure the inclusion of incentivized measures where applicable.

3. Provides statistical information and data to help the Director of SBCR and the Small Business Program Manager establish reasonable biannual prime and subcontract small business goals for the NRC.
4. Provides, upon the request of the Director of SBCR or the Small Business Program Manager, special analyses relating to the NRC's performance in the small business program areas covered by this directive.
5. Ensures that small business participation is included during the acquisition phase of procurements in accordance with applicable statutes, regulations, Executive Orders, and Federal policy.
6. Ensures that thorough market research is conducted to evaluate the capability and capacity of the small business marketplace in accordance with applicable statutes, regulations, Executive Orders, and Federal policy.
7. Facilitates access to advance procurement plans.

#### **I. Strategic Sourcing Group (SSG)**

1. Oversees implementation of the strategic acquisition program.
2. Ensures agency procurement actions at and above the established SSG dollar threshold meet agency and programmatic needs and expectations.
3. Membership includes the Deputy Executive Director for Corporate Management (DEDCM), chair; Deputy Executive Director for Reactor and Preparedness Programs (DEDR); Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT); Deputy Chief Financial Officer (DCFO); Senior Procurement Executive (SPE); Deputy Assistant General Counsel/Special Counsel for Acquisition (OGC); and Director, SBCR.

#### **IV. APPLICABILITY**

The policy and guidance in this directive and handbook apply to all NRC employees that are involved in the acquisition process at the agency, including SSG members, certified contracting officer representatives, contracting officers, contract specialists, small business specialists, and senior management that serve as the designating officials for agency acquisitions.

#### **V. DIRECTIVE HANDBOOK**

Handbook 11.4 facilitates implementation of the NRC Small Business Program. The handbook includes guidance regarding the Federal Small Business Program; small business set-asides, including the Small Business Program's acquisition review process; small business subcontracting, including the Small Business Program's subcontracting plan

review process; the U.S. Small Business Administration Procurement Center Representative; contract consolidation and bundling; and contracting with the U.S. Small Business Administration.

## **VI. EXCEPTIONS**

Exceptions to or deviations from this directive and handbook may be granted by the Director of SBCR or the NRC Small Business Program Manager in an acting capacity.

## **VII. REFERENCES**

### ***Code of Federal Regulations***

13 CFR, "Business Credit and Assistance."

13 CFR Part 121, "Small Business Size Regulations."

13 CFR, Part 124, "8(a) Business Development/Small Disadvantaged Business Status Determinations."

48 CFR Chapter 1, "Federal Acquisition Regulation" (FAR)—

Part 2, "Definitions of Words and Terms."

Part 7, "Acquisition Planning."

Part 8, "Required Sources of Supplies and Services."

Part 10, "Market Research" (FAR Part 10).

Part 13, "Simplified Acquisition Procedures."

Part 15.304, "Evaluation Factors and Significant Subfactors" (FAR 15.304).

Part 19, "Small Business Programs."

48 CFR Chapter 20, "Nuclear Regulatory Commission."

### ***Executive Orders***

Executive Order 13360, "Providing Opportunities for Service-Disabled Veteran Businesses to Increase their Federal Contracting and Subcontracting," October 20, 2004.

### ***General Services Administration (GSA)***

GSA Federal Supply Schedule, available at [http://www.gsa.gov/portal/category/100611?utm\\_source=OCM&utm\\_medium=print-radio&utm\\_term=HDR\\_4\\_Prchsng\\_schedules&utm\\_campaign=shortcuts](http://www.gsa.gov/portal/category/100611?utm_source=OCM&utm_medium=print-radio&utm_term=HDR_4_Prchsng_schedules&utm_campaign=shortcuts).

***Nuclear Regulatory Commission***

Forms are available through NRC's intranet site in the NRC Forms Library on SharePoint, at <http://fusion.nrc.gov/nrcformsportal/default.aspx>.

Management Directive 11.1, "NRC Acquisition of Supplies and Services."

NRC Small Business Program SharePoint site:

<http://portal.nrc.gov/edo/sbcr/SB/default.aspx>.

NRC Small Business Program Web site:

[http://www.internal.nrc.gov/SBCR/small\\_business.html](http://www.internal.nrc.gov/SBCR/small_business.html).

Partnership Agreement Between The U.S. Small Business Administration and The U.S. Nuclear Regulatory Commission, available at

<https://adamsxt.nrc.gov/WorkplaceXT/getContent?id=current&vsId=%7B5153CA7D-8307-4650-9E36-03D1FB76DDA8%7D&objectStoreName=Main.Library&objectType=document>  
(ML12321A388).

Staff Resources, including templates, are available on NRC's internal Web site, at <http://www.internal.nrc.gov> under the subject heading NEAT. Additional procurement information is available on NRC's external Web site, at <http://www.nrc.gov/about-nrc/contracting.html>.

***Office of Management and Budget (OMB) Documents***

OMB Circular A-123, "Management's Responsibility for Internal Control," December 21, 2004, available at [http://www.whitehouse.gov/omb/circulars\\_a123\\_rev/](http://www.whitehouse.gov/omb/circulars_a123_rev/).

OMB Circular A-127, "Financial Management Systems," July 9, 2009, available at <http://georgewbush-whitehouse.archives.gov/omb/circulars/a127/a127.html>.

OMB Memorandum, "Increasing Opportunities for Small Businesses in Purchase Card Micro-Purchases," December 19, 2011, available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/increasing-opportunities-for-small-businesses-in-purchase-card-micro-purchases.pdf>.

***Small Business Administration***

U.S. Small Business Administration Programs, at <http://www.sba.gov/about-sba-services/199>.

***United States Code***

“Additional Powers” (15 U.S.C. 637).

Small Business Act, as amended (15 U.S.C. 631 et seq.).

Small Business Reauthorization Act of 1997 (15 U.S.C. 638 note).

The Veterans Entrepreneurship and Small Business Development Act of 1999  
(15 U.S.C. 657b note).



**U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)**

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## I. INTRODUCTION

It is the policy of the U.S. Nuclear Regulatory Commission to provide the maximum practicable prime and subcontract opportunities to small businesses in support of the agency's mission and objectives. This policy ensures compliance with the law, support of Federal economic and business development initiatives, active participation in the economic recovery and security of the Nation through job creation, achievement of agency small business contracting goals, and availability of an innovative and competitive supplier base for the agency. Office directors and regional administrators will make a concentrated effort to effectively implement this policy within their respective offices and achieve agency small business goals and objectives.

## II. NRC SMALL BUSINESS PROGRAM

### A. General

1. The NRC Small Business Program was established under the authority of the Small Business Act, as amended (15 U.S.C. 631 et seq.). The purpose of the NRC Small Business Program is to support and advocate for the Federal portfolio of small business programs in agency acquisitions.
2. NRC's mission is supported by contracts with businesses of all sizes and types. These contracts are for products and services that assist the agency in meeting its

- operational goals and objectives. The supporting business community includes large businesses, nonprofits, educational institutions, and small businesses, including those small businesses owned by the disadvantaged, women, veterans, service-disabled veterans, and companies located in Historically Underutilized Business Zones (HUBZones) across the country. The agency recognizes the importance of contract support to agency operations and mission objectives and supports a Small Business Program that is fully integrated into agency acquisition operations.
3. The Small Business Program formulates policies and designs and implements an operational program in accordance with applicable statutes, regulations, Executive Orders, and Federal policy. Specifically, the NRC follows the Office of Management and Budget (OMB) Circular A-123, "Management's Responsibility for Internal Control," and OMB Circular A-127, "Financial Management Systems."
  4. The Small Business Program conducts acquisition oversight and ensures the agency meets regulatory requirements through the following actions:
    - (a) Facilitates small business set-asides.
    - (b) Enables incentivized measures to increase small business participation in agency acquisitions, such as an incentivized small business subcontracting evaluation factor or a small size status evaluation factor for General Services Administration's (GSA's) Federal Supply Schedule acquisitions.
    - (c) Mitigates the impact of justified contract consolidation/bundling.
    - (d) Monitors small business contract performance.
    - (e) Supports acquisition planning and market research efforts to identify the capability and capacity of the small business marketplace.
  5. The Small Business Program provides technical assistance and training to the business community and agency officials.
  6. The Small Business Program engages in business-related outreach events.
  7. The Small Business Program supports economic and business development initiatives for small businesses.

## **B. Portfolio of Small Business Programs and Parity**

### 1. Small Business Definition

A business that is independently owned and operated, not dominant in its field of operation, and meets size eligibility requirements and criteria defined by the U.S. Small Business Administration (SBA). Depending on the industry, size standard

eligibility is based on either the average number of employees for the preceding 12 months or on sales volume averaged over a 3-year period.

## 2. Small Business Parity

- (a) There is parity among the Federal portfolio of small business program categories, which includes the 8(a) Business Development Program, woman-owned small businesses, service-disabled veteran-owned small businesses, small businesses, and small businesses located in HUBZones. No single small program category has preference over another program in Federal acquisitions (see Federal Acquisition Regulation (FAR) 19.203(a)).
- (b) NRC acquisition staff (business advisory center specialists, contract specialists, contracting officers, and contracting officer's representatives) are encouraged to contact the Small Business Program Manager to evaluate the agency's small business goal achievement under the small business categories when deciding which program to use for a particular contract action. This communication will allow the NRC to improve small business contracting under a particular program category.

## 3. Small Business Programs

### (a) 8(a) Business Development Program

- (i) The SBA's 8(a) Business Development Program, named for the section of the Small Business Act from which it is derived, is an economic and business development program designed to help small disadvantaged businesses compete in the American economy and gain access to the Federal procurement marketplace, foster entrepreneurship, and provide a mechanism for business development.
- (ii) Section 8(a) of the Small Business Act authorizes Federal agencies to enter into contracts with SBA. The SBA then subcontracts with eligible small disadvantaged businesses accepted into SBA's 8(a) Business Development Program. The Partnership Agreement Between The U.S. Small Business Administration and The U.S. Nuclear Regulatory Commission, available at <https://adamsxt.nrc.gov/WorkplaceXT/getContent?id=current&vsId=%7B5153CA7D-8307-4650-9E36-03D1FB76DDA8%7D&objectStoreName=Main...Library&objectType=document>, delegates authority to the NRC to enter into 8(a) prime contracts with 8(a) program participants. Nevertheless, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract awards, and retains appeal rights in accordance with FAR 19.810.

(iii) A business applicant may be accepted into the program if it is determined to be both socially and economically disadvantaged. An 8(a) Program participant receives a program term of 9 years from the date of SBA's approval letter certifying admission to the program. The participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility. The 9-year program term may be shortened only by termination, early graduation (including voluntary early graduation), or voluntary withdrawal (see FAR 19.8).

(b) Women-Owned Small Business Program

The Women-Owned Small Business (WOSB) Program is a program that authorizes contracting officers to set aside certain requirements for competition solely among WOSBs or economically disadvantaged women-owned small businesses. The Federal Government is charged with awarding 5 percent of its prime and subcontract dollars to WOSBs. WOSB set-asides are permitted in 83 industries and are permitted for acquisitions that do not exceed the thresholds for services and manufacturing identified in FAR 19.15.

(c) Service-Disabled Veteran-Owned Small Business Program

The Veterans Entrepreneurship and Small Business Development Act of 1999 (15 U.S.C. 657b note) established an annual Governmentwide goal of not less than 3 percent of the total value of all prime contract and subcontract awards for participation by small businesses owned and controlled by service-disabled veterans. The Service-Disabled Veteran-Owned Small Business (SDVOSB) Program sets forth the criteria to be used in Federal contracting to determine service-disabled veteran status, business ownership and control requirements, guidelines for establishing sole source and set-aside procurement opportunities, and details the protest and appeal procedures for SDVOSB procurements. The purpose of the SDVOSB Program is to provide procuring agencies with the authority to set acquisitions aside exclusively for competition among SDVOSBs and to execute sole source awards to SDVOSBs under certain conditions (see FAR 19.14).

(d) HUBZone Program

The HUBZone Empowerment Contracting Program was enacted into law as part of the Small Business Reauthorization Act of 1997 (15 U.S.C. 638 note). The program is designed to promote economic development and employment growth in distressed areas by providing access to more Federal contracting opportunities. To qualify as a HUBZone, a business (except Tribally-owned firms) must meet the criteria in FAR 19.13.

### **C. Small Business Goals**

1. Federal contracting small business programs are intended to promote job growth, maintain an innovative and competitive supplier base, and protect the economic security of the Nation. To ensure small business participation in the Federal marketplace, statutory contracting goals have been established for small business program categories.
2. The SBA is responsible for the management and oversight of the small business procurement process across the Federal Government. SBA negotiates with Federal departments regarding their prime contracting goal and achievement with small businesses to ensure that small businesses have the maximum practicable opportunity to provide goods and services to the Federal Government.
3. Section 15(g) of the Small Business Act sets forth statutorily mandated small business prime contract goals, which are as follows: 23 percent for small business, 5 percent for small disadvantaged businesses, 5 percent for women-owned small businesses, 3 percent for service-disabled veteran-owned small businesses, and 3 percent for HUBZones. SBA's goaling strategy is based on a 3-year trend analysis and prior year goal achievement.

## **III. SMALL BUSINESS SET-ASIDES**

### **A. General**

Under certain circumstances, a contracting officer is required to set acquisitions aside for competition among small businesses or may sole source an acquisition opportunity to certain small businesses. Thresholds, based upon total contract value, dictate when an acquisition must be set aside for small businesses and the level of evaluation required in determining the capability of the small business marketplace. It is the NRC's policy to develop and strengthen opportunities in Federal contracting for all types of small businesses.

### **B. Set-Aside Thresholds and Requirements**

There is one threshold in Federal contracting where small business compliance may be assessed and two thresholds where assessment is mandatory: micro-purchases (discretionary), simplified acquisitions exceeding the micro-purchase threshold (mandatory), and acquisitions valued over the simplified acquisition threshold (mandatory).

1. Acquisitions Below the Micro-Purchase Threshold (Discretionary Assessment)
  - (a) Micro-purchases are acquisitions of supplies or services for which the aggregate amount does not exceed the dollar threshold in FAR 2.101, "Definitions," and

FAR Subpart 13.2, "Actions at or Below the Micro-Purchase Threshold," and are not required to be set aside for small businesses.

- (b) However, national policy as reflected in the OMB memorandum, "Increasing Opportunities for Small Businesses in Purchase Card Micro-Purchases," available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/increasing-opportunities-for-small-businesses-in-purchase-card-micro-purchases.pdf>, states that agencies should use small businesses to the maximum extent practicable (even though not required by law) and that small business contracting is a top priority of the Federal Government. Therefore, agency personnel are encouraged to evaluate the capability and capacity of the small business marketplace before ordering a product and/or service that is valued under the micro-purchase threshold.
  - (c) Agency personnel should also determine whether purchases made under an agency enterprisewide contract (with multiple awardees) are required to be with small businesses (unless small businesses are unable to provide the particular product and/or service).
2. Acquisitions Exceeding the Micro-Purchase Threshold and Below the Simplified Acquisition Threshold (Mandatory Assessment)
- (a) Each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see FAR 13.003(b)(1)) is automatically reserved exclusively for small businesses and shall be set aside unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small businesses that are competitive in terms of market prices, quality, and delivery.
  - (b) If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include, in the contract file, the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small businesses, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis (see FAR 19.502-2(a)).
  - (c) A Determination and Findings document is not required to support the determination for small business set-asides (see FAR 6.203(b)).
  - (d) Small business set-asides are not required for acquisitions that occur outside the United States or its territories and possessions (see FAR 19.000(b)).
  - (e) The small business set-aside requirement does not apply to purchases from required sources of supply under FAR Part 8, "Required Sources of Supplies and

Services.” Orders made under the GSA’s Federal Supply Schedule are not required to be set aside for small businesses and are up to the discretion of the contracting officer (see FAR 8.405).

- (f) The acquisition being set aside for small businesses may be offered to the U.S. Small Business Administration’s 8(a) Business Development Program or set aside for HUBZones, SDVOSBs, or WOSBs. In addition, sole source contracting may be permitted for 8(a) firms, HUBZones, or SDVOSBs under certain thresholds (see FAR 13.003 and FAR 19.505-2(a)).
3. Acquisitions Exceeding the Simplified Acquisition Threshold (Mandatory Assessment)
- (a) Each acquisition of supplies or services that has an anticipated dollar value exceeding the simplified acquisition threshold (including option years) is required to be set aside for small businesses if the contracting officer has the reasonable expectation of receiving at least two offers from small businesses that have the capability and capacity to perform the requirement at a fair market price (see FAR 19.502-2(b)). Market research is required to determine the capability and capacity of the small business marketplace (see FAR Part 10 and Management Directive 11.1, “NRC Acquisition of Supplies and Services,” for more information on market research).
  - (b) Small business set-asides are not required for acquisitions that occur outside the United States or its territories and possessions (see FAR 19.000(b)).
  - (c) The small business set-aside requirement does not apply to purchases from required sources of supply under FAR Part 8. Orders made under the GSA’s Federal Supply Schedule are not required to be set aside for small businesses and are up to the discretion of the contracting officer (see FAR 8.405).
  - (d) The acquisition being set aside for small businesses may be offered to the U.S. Small Business Administration’s 8(a) Business Development Program or set aside for HUBZones, SDVOSBs, or WOSBs. In addition, sole source contracting may be permitted for 8(a) firms, HUBZones, or SDVOSBs under certain thresholds (see FAR Subpart 19).

### **C. Nonmanufacturer Rule**

#### 1. Description

In order for a business to qualify as a small business on a small business set-aside for the acquisition of supplies, a business must either manufacture the item in accordance with the limitations on subcontracting or supply the product of a small business made in the United States (see 15 U.S.C. 637(a)(17) and Title 13 of the *Code of Federal Regulations* (CFR) 121.406). The requirement that a



nonmanufacturer supply the product of a small business is commonly referred to as the Nonmanufacturer Rule. On a supply contract, the limitation of subcontracting requires that a firm must perform at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials. Therefore, the Nonmanufacturer Rule is an exception to the limitation requirements, and provides that a business that is not a manufacturer may qualify as a small business on a supply contract set-aside for small businesses if it is considered a small business under the applicable size standard and supplies either its own product or that of another small business made in the United States.

## 2. Applicability

The Nonmanufacturer Rule does not apply to service contracts and acquisitions with a total estimated value below the threshold identified in FAR 19.502-2(c). To determine whether a contract is for a supply or service, the North American Industrial Classification System (NAICS) code which best describes the principal purpose of the product or service being acquired must be selected. Primary consideration is given to the industry description in the NAICS, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods being purchased. A wholesale or retail trade NAICS code may not be designated in a procurement for supplies.

## 3. Nonmanufacturer Rule Waiver

- (a) The Small Business Act contains provisions that allow the Administrator of the SBA to waive the Nonmanufacturer Rule requirement when there are no small business manufacturers or processors available to supply the product to the Federal Government. The SBA's Associate Administrator has been delegated the authority to make decisions on waivers of the rule for a class of supplies and for individual purchases (see 13 CFR 121).
- (b) Each year SBA publishes a document that waives the requirement for a class of products where it has determined that no small business manufacturer or processor is available in the Federal procurement marketplace. Any individual or organization (government agency, business, association, etc.) may request a waiver for a class of products. Class waivers issued by SBA may be found at [http://www.sba.gov/sites/default/files/09212011\\_class%20waivers.pdf](http://www.sba.gov/sites/default/files/09212011_class%20waivers.pdf).
- (c) Individual waivers may be issued by SBA by requesting a waiver for a specific requirement when the particular supply has not been granted a class waiver. A waiver may be granted by SBA after reviewing a determination by a contracting officer stating that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period of performance) required in the solicitation.

- (d) The waiver request should be in writing addressed to the SBA Associate Administrator for Government Contracting and should specifically state the NAICS code of the product(s) for which the waiver is sought. Market research is required to determine that no small business manufacturer exists for the subject product(s).

#### **D. Small Business Set-Aside Types**

Small business set-asides have precedence over full and open competitions (see FAR 19.203(e)). There are two types of small business set-asides: total and partial. A contracting officer must consider both set-aside types before issuing a solicitation for full and open competition. With respect to small business set-asides and parity among small business programs, 8(a) firms, WOSBs, SDVOSBs, and HUBZones have equal standing. Acquisition staff are encouraged to consult with the Small Business Program when selecting a specific small business program category and take into consideration the agency's small business prime contract performance.

##### **1. Total Small Business Set-Asides**

A total small business set-aside reserves the entire scope of the requirement for small business competition or sole source contracting under an applicable small business program. A total small business set-aside shall be considered before a full and open competition and before a partial small business evaluation is considered (see FAR 19.203(e)). The acquisition shall be set aside in accordance with Section III.B of this handbook.

##### **2. Partial Small Business Set-Aside**

A partial small business set-aside sets aside a portion of an acquisition for competition between small businesses. If the total scope of a requirement cannot be set aside for a small business in its entirety, a partial small business set-aside shall be considered. The contracting officer shall consider whether a partial small business set-aside is possible before issuing the solicitation for full and open competition (see FAR 19.203(e)).

##### **3. Multiple-Award Contracts and Small Business Set-Asides**

Contracting officers may, at their discretion, when conducting multiple-award procurements using full and open competition, reserve one or more contract awards for any of the small businesses identified in FAR 19.003(a)(3). The specific program eligibility requirements apply to setting aside part(s) of a multiple-award contract for any of the small businesses identified in FAR 19.003 (a)(3) (see FAR 19.502-4 and Subpart 16.5).

**E. Repetitive Set-Aside Policy**

Once a supply and/or service has been acquired through a small business set-aside, the contracting officer shall make every effort to ensure that future purchases for the same or similar supplies and/or services are made under the small business program category of the original award. For example, an SDVOSB set-aside follow-on contract would be set aside for SDVOSB competition. Acquisitions offered and accepted into the 8(a) Business Development Program must remain under the program (unless the acquisition is released by SBA, see 13 CFR 124).

**F. Procedural Guidance for Small Business Program Review**

Advance Procurement Plans (APP) for acquisitions exceeding the micro-purchase threshold must be available to the Small Business Program for review. APPs below the micro-purchase threshold are not required to be submitted to the Small Business Program. Acquisition and other NRC staff are encouraged to contact the Small Business Program as early as possible in the acquisition process to ensure compliance with small business laws and to provide the maximum practicable prime and subcontract opportunities for small businesses.

**1. Advance Procurement Plan Reviews**

The Small Business Program will make initial recommendations to the Acquisition Management Division (AMD), Office of Administration (hereinafter "AMD"), and other NRC staff based upon the quarterly APPs received. This effort should result in the selection of requirements to be set aside for small business competition before the requisition<sup>1</sup> stage of the acquisition process. The earlier a set-aside action is considered, the greater the likelihood established goals can be met. The Small Business Program may also initiate a dialogue directly with an NRC office director or regional administrator upon receipt of the APP. The APP shall have sufficient information to permit the Small Business Program to evaluate the capability and capacity of the small business marketplace.

**2. Acquisitions Below the Micro-Purchase Threshold**

Acquisitions below the micro-purchase threshold do not require Small Business Program review and concurrence. However, the Small Business Program will provide a list of small business sources, if requested, for the relevant supplies and/or sources. Staff also can request review of these acquisitions from the Small Business Program by electronically sending the documents to [smallbusiness@nrc.gov](mailto:smallbusiness@nrc.gov).

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<sup>1</sup> NRC Form 400, "Request for Procurement Action (RFPA)," is no longer being used for procurement actions. Requisitions are submitted through the Strategic Acquisition System (STAQS).

### 3. Acquisitions Between the Micro-Purchase Threshold and the Simplified Acquisition Threshold

Acquisitions between the micro-purchase threshold and the simplified acquisition threshold are automatically set aside for small business. Acquisitions within this range may be forwarded to the Small Business Program for review by electronically sending NRC Form 827, "Small Business Review," and associated documents (see instructions section of NRC Form 827) to [smallbusiness@nrc.gov](mailto:smallbusiness@nrc.gov). Small Business Program review forms may be found in the NRC Forms Library on SharePoint at <http://fusion.nrc.gov/nrcformsportal/default.aspx>.

### 4. Acquisitions Exceeding the Simplified Acquisition Threshold

- (a) Acquisition compliance review packages shall be submitted to the Small Business Program using NRC Form 827, and signed by a contracting officer. The documentation accompanying NRC Form 827 shall include the items listed in the instructions section of the form, such as the statement of work, market research conducted within the previous 18 months, results of market research with respect to business capabilities, Independent Government Cost Estimate, evaluation criteria, and justification documentation for an other than full and open competition. The NRC Form 827 and supporting documentation should be electronically forwarded to [smallbusiness@nrc.gov](mailto:smallbusiness@nrc.gov).
- (b) The Small Business Program will review acquisition packages to ensure compliance with small business statutes, regulations, Executive Orders, and Federal agency policy to provide the maximum practicable prime and subcontract opportunities for small businesses. These reviews will be completed within 10 business days of receiving a complete review package by providing concurrence or nonconcurrence of a contracting officer's acquisition method.
- (c) Acquisitions exceeding the simplified acquisition threshold that are not set aside for small businesses may include an incentivized small business subcontracting plan evaluation factor. The specific scoring measure is within the discretion of the contracting officer (e.g., point score, adjectival score, pass/fail, or other scoring methods).
- (d) In the event that the Small Business Program does not concur with a contracting officer's recommendation, the Small Business Program shall provide a written justification along with supporting documentation of its recommendation, including legal citations of applicable small business laws. However, even in the absence of a Small Business Program recommendation, the contracting officer should take positive action to meet national goals and objectives with respect to the placement of contracts with small businesses.

- (e) Acquisitions set aside for small businesses require only that a courtesy copy be forwarded to the Small Business Program for record keeping and monitoring purposes, as no review/concurrence is required.
- 5. Orders Exceeding the Simplified Acquisition Threshold under the General Services Administration's Federal Supply Schedule

Acquisitions exceeding the simplified acquisition threshold that will be acquired under the GSA's Federal Supply Schedule may be set aside for small businesses (see FAR 8.405-5(a)).
- 6. Appeal of Contracting Officer Recommendations
  - (a) In the event the contracting officer disagrees with the recommendation of the Small Business Program, the contracting officer and Small Business Program shall attempt to reconcile the differences. If these differences cannot be resolved within 5 business days of receipt of the Small Business Program recommendation, the contracting officer will justify, in the contract file, why the set-aside action is not a sound recommendation and inform the Small Business Program.
  - (b) The Director of the Office of Small Business and Civil Rights (SBCR) has 3 days to appeal the matter to the Director of AMD. Supporting documentation of each office's position shall be submitted to the Director of AMD within 5 business days and the decision of the Director of AMD shall be made within 10 business days. If the Director of SBCR disagrees with the decision of the Director of AMD, the Director of SBCR may appeal the matter to the NRC Executive Director for Operations (EDO) for final determination.

## **IV. SMALL BUSINESS SUBCONTRACTING**

### **A. General**

1. An other-than-small business that receives a Federal contract or subcontract over the threshold identified in FAR 19.702(a)(1) must adopt a subcontracting plan in accordance with applicable statutes, regulations, Executive Orders, and Federal policy (see FAR 19.702 and 19.704).
2. Subcontracting plans contain separate and distinct goals for each small business program category, consistent with efficient performance of the contract. Subcontracting plans ensure maximum opportunities for small businesses to participate in contract performance.

**B. Requirements**

1. In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, that individually is expected to exceed the threshold identified in FAR 19.702(a)(1) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer, with advice and recommendations from an agency small business specialist in SBCR, the offeror will be ineligible for award (see FAR 19.702(a)(1)).
2. The proposed subcontracting plan must be approved by the contracting officer before the contract can be awarded. The contracting officer should obtain the advice and recommendations from the agency small business specialist through submission of NRC Form 828, "NRC Small Business Subcontracting Plan Review." The Small Business Program reviews subcontracting plans to ensure compliance with FAR 19.7.
3. Once approved, the subcontracting plan is incorporated into the acquisition and becomes a material part of the contract. This is significant because an other-than-small business prime contractor that fails to make a good faith effort to achieve the goals established in the subcontracting plan may be assessed liquidated damages or found in breach of contract and terminated for default (see FAR 19.702(c) and 19.705-7). The criteria for an acceptable subcontracting plan are set forth in FAR 19.704.

**C. Small Business Subcontracting Goals**

1. Contractors establish goals in all small business categories based upon subcontracting opportunities available in various commodity areas. Goals are developed in each category; however, the disadvantaged, woman-owned, HUBZone-owned, service-disabled veteran-owned, and veteran-owned goals are subsets of small business and may intersect multiple categories.
2. The small and other-than-small business subcontracting goals may equal the total subcontracting base, as reflected in the offeror's cost proposal, or equal the total contract value. When reviewing the goals targeted for small businesses, consideration of the offeror's efforts toward and methodology for identifying business opportunities will assist in determining whether goals reflect good faith efforts for maximizing opportunities in susceptible industry arenas. When a modification meets the criteria in 19.702 for a subcontracting plan, the goals associated with the modification shall be added to those in the existing subcontract plan (see FAR 19.705-2(e)).

**D. Procedural Guidance for Small Business Program Review**

1. The contracting officer shall forward a copy of each required subcontracting plan to the Small Business Program for review and concurrence at [smallbusiness@nrc.gov](mailto:smallbusiness@nrc.gov) by completing and signing an NRC Form 828. The review package shall describe the nature and scope of work proposed using small businesses, the total dollar amount, and the percentage of work to be awarded to small businesses. If the Small Business Program determines that the plan submitted does not reflect the best effort by the offeror to award subcontracts to small businesses to the fullest extent consistent with the efficient performance of the contract, the contracting officer shall be notified in writing within 10 business days from the receipt of a complete NRC Form 828 review package. Where the Small Business Program is not in agreement with the contracting officer's decision regarding subcontracting, the procedures set forth in Section III.F.6 of this handbook should be followed.
2. Contracting officers are encouraged to use NRC Form 829, "NRC Small Business Subcontracting Plan," to facilitate Small Business Program reviews. Small Business Program review forms may be found in the NRC Forms Library on SharePoint.
3. The Small Business Program may review subcontract reports, conduct site visits to contractor facilities (if necessary), and monitor all work awarded to small and 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, the Small Business Program will forward a written report to the contracting officer for appropriate action.

**E. Small Business Subcontracting Plan Evaluation Factor**

For acquisitions exceeding the threshold, the extent of participation of small disadvantaged businesses in performance of the contract shall be evaluated in unrestricted acquisitions subject to certain limitations (see FAR 15.304(c)(4)).

**V. THE SBA PROCUREMENT CENTER REPRESENTATIVE****A. Role of the SBA Procurement Center Representative**

The SBA has assigned a Procurement Center Representative to the agency to carry out SBA policies and programs. The assigned SBA Procurement Center Representative is required to comply with the contracting agency's directives governing the conduct of contacting personnel and the release of contract information. The duties assigned to an SBA Procurement Center Representative include the following:

1. Reviewing proposed acquisitions to recommend setting aside acquisitions;
2. Breaking out portions of the work for competition among small businesses;

3. Recommending small business sources;
4. Appealing to the Director of AMD any contracting officer's determination not to solicit a business recommended by the SBA for a particular acquisition, when not doing so results in no small business being solicited;
5. Conducting periodic reviews of a contracting activity to ascertain whether it is complying with small business policies; and
6. Sponsoring and participating in conferences and training designed to increase small business participation in the contracting activities of the office (see FAR 19.402).

#### **B. Surveillance Review Process**

1. Upon the request of the SBA Procurement Center Representative and subject to applicable acquisition and security regulations, contracting officers shall give the SBA Procurement Center Representative access to all reasonably obtainable contract information that is directly pertinent to the contracting officer's official duties (see FAR 19.402(c) and FAR 19.202-1(e)). The Small Business Program will facilitate the acquisition reviews by the SBA Procurement Center Representative and inform the contracting officer of the SBA Procurement Center Representative's recommendations.
2. If the SBA Procurement Center Representative believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. The recommendation shall be made to the contracting officer within 10 days of the Small Business Program receiving a complete NRC Form 827 review package.

#### **C. Appeal Process**

1. If the contracting officer rejects the recommendation of the SBA Procurement Center Representative, the contracting officer will provide written notice to the SBA Procurement Center Representative within 5 business days of receipt of the recommendation. The SBA Procurement Center Representative may appeal the contracting officer's rejection to the Director of AMD within 2 business days after receiving notice of the rejection. The Director of AMD shall render a decision and provide it to SBA within 7 business days. Pending the issuance of the decision, the contracting officer shall suspend the award of the acquisition (see FAR 19.505).
2. If the Director of AMD agrees that the rejection of SBA's recommendation was appropriate, the Procurement Center Representative may, within 2 business days of notice of the decision, request that the agency suspend the award until the SBA



- Administrator appeals the matter to the agency's EDO. A request to suspend the action need not be honored if the contracting officer determines that proceeding to contract award and performance is in the public interest. After SBA's notice has been received, the SBA shall have 15 business days to appeal the matter to the EDO. If no appeal has been received, the agency shall deem SBA's request to suspend the action and appeal to be withdrawn (see FAR 19.505).
3. If an appeal is made to the EDO, the agency and SBA must provide justification of their respective positions to the EDO within the 15 business days. The EDO has 30 business days to reply to the SBA with his/her decision, which will be considered final (see FAR 19.505).

## **VI. CONTRACTING CONSOLIDATION AND BUNDLING**

### **A. General**

1. Bundling occurs when an agency decides to consolidate two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business due to the diversity, size, or specialized nature of the elements of the performance specified; the aggregate dollar value of the anticipated award; the geographical dispersion of the contract performance sites; or any combination of the factors described. The requirements for bundling do not apply to acquisitions set aside for small business.
2. Consolidation efforts could have a significant impact upon small businesses. When multiple requirements are grouped into a single contract, that contract may be difficult for a small business to perform. For this reason, Congress enacted stringent limitations upon bundling.

### **B. Bundling Analysis Requirements**

When consolidating two or more existing contract actions already being performed, or could have been performed, by small businesses into one contract action that exceeds the threshold identified in FAR 7.104(d)(2)(i)(C), the contracting officer shall complete the following activities at least 30 days prior to the release of the solicitation:

1. Consult with the Small Business Program and the SBA Procurement Center Representative on market research efforts to identify the capability and capacity of the small business marketplace (see FAR 7.104(d)(1)).
2. Structure requirements to facilitate prime contracting by small businesses to the extent practicable, including the evaluation of whether the acquisition can be severed into functional areas to permit the setting aside of certain portions of the requirement

- in an effort to maximize small business participation and reduce or minimize the scope of bundling (see FAR 7.107(e)).
3. If the acquisition cannot be set aside for small business and offers a significant opportunity for subcontracting, the contracting officer shall include a subcontracting plan evaluation factor that incentivizes subcontracting to small businesses into the solicitation evaluation criteria (see FAR 15.304(c)(5)).
  4. Notify all incumbent of small business concerns that may be affected by the agency's intention to bundle the requirement and how they may contact the assigned SBA Procurement Center Representative to challenge the agency's consolidation efforts (see FAR 10.001(c)(2)).
  5. Provide the Director of SBCR, for review, a justification for substantial bundling.

### **C. Bundling Justification Requirements**

1. The bundling justification shall articulate the steps taken to ensure that bundling is both reasonable and necessary. Bundling is reasonable and necessary if the Government would derive measurably substantial benefits from the consolidation of multiple actions into a solicitation that is unsuitable for an award to a small business. Measurably substantial benefits include the following:
  - (a) Cost savings or price reduction,
  - (b) Quality improvements that will save time, improve or enhance performance, improve or enhance efficiency, or reduce acquisition cycle times, and
  - (c) Better terms and conditions.
2. The contracting officer must quantify the benefits and explain how they will measurably benefit the NRC.
  - (a) Acquisitions with a total estimated contract value that amount to less than the amount listed in FAR 7.107(b)(1) would require a 10 percent cost savings, and
  - (b) Acquisitions with a total estimated contract value that amounts to more than the amount listed in FAR 7.107(b)(2) requires a 5 percent cost savings or a cost savings totaling the amount identified in FAR 7.107(b)(2), whichever is greater.
3. The bundling justification document shall also identify specific benefits to be derived from bundling, assess impediments to small business participation, specify actions designed to maximize small business prime and subcontract opportunities, provide a determination that benefits justify bundling, and identify alternative approaches that would minimize bundling and include rationale for not choosing those approaches (see FAR 7.107).

**D. Bundling Review Process**

The bundling justification shall be sent to the Director of SBCR for review and concurrence. The Director of SBCR will complete the review within 10 business days and will forward the document to the SBA Procurement Center Representative for review and concurrence. The SBA Procurement Center Representative has 15 calendar days to complete the review.

**VII. CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (SBA)**

Please review Management Directive 11.1, "NRC Acquisition of Supplies and Services," for more information.

**VIII. GLOSSARY****8(a) Firm**

A firm that is 51 percent owned and controlled by a socially and economically disadvantaged individual or individuals. The SBA must certify that the small business is owned by socially and economically disadvantaged individuals in order to participate in the 8(a) Business Development Program, which enables small disadvantaged businesses to compete in the American economy through business development. (See 13 CFR 124 for more information on the 8(a) Business Development Program.)

**Economically Disadvantaged Women-Owned Small Business**

A company that is at least 51 percent owned by one or more women who are economically disadvantaged. A woman is presumed economically disadvantaged if she has a personal net worth of less than \$750,000 (with some exclusions), her adjusted gross yearly income averaged over the 3 years preceding the certification is less than \$350,000, and the fair market value of all her assets is less than \$6 million (with some exclusions). However, SBA may waive this requirement of economic disadvantage for industries in which WOSBs are substantially underrepresented.

**Full and Open Competition**

A solicitation for which all firms, regardless of business size, are permitted to submit a bid or proposal. The solicitation is not restricted to small business.

**GSA Federal Supply Schedules**

GSA contracts with commercial firms to provide supplies and/or services at stated prices for given periods of time. Task or delivery orders issued by other Federal agencies are placed directly against the schedule contract, and deliveries are made directly to the customer. The GSA Schedules Program reflects commercial buying practices. More information on the GSA Schedules Program is available at <http://www.gsa.gov>.

**HUBZone Business**

A company that is 51 percent unconditionally and directly owned and controlled by U.S. citizens, maintains a principal office located in a HUBZone, and ensures that at least 35 percent of its employees reside in a HUBZone.

**Justification for Other Than Full and Open Competition**

Written explanation included in any contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source or a limited number of sources.

**Service-Disabled Veteran-Owned Small Business**

A small business that is at least 51 percent owned by one or more service-disabled veterans. Service-disabled veteran means a veteran with a disability that is service-connected; the disability was incurred in the line of duty while serving in the U.S. active military, naval or air service. The U.S. Department of Veteran Affairs certifies SDVOSB status.

**Small Business**

A business that is independently owned and operated and which is not dominant in its field of operation and meets size eligibility requirements and criteria as defined by the SBA in FAR 19.001. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding 12 months or on sales volume averaged over a 3-year period.

**Small Disadvantaged Business**

A small business that is at least 51 percent owned and controlled by a socially and economically disadvantaged individual(s). This can include a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, with management and business operations controlled by one or more of these individuals. Individuals are presumed economically disadvantaged if their net worth is less than \$750,000. Businesses self-certify size and ownership status. (See 13 CFR 124.1002 for more information on small disadvantaged businesses.)

**Socially Disadvantaged Individuals**

Socially disadvantaged individuals are 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. (See 13 CFR 124.103 for more information on the individuals determined to be socially disadvantaged.)

**Veteran-Owned Small Business (VOSB)**

A small business that is at least 51 percent owned by one or more veterans (as defined at 38 U.S.C. 101(2)). In the case of any publicly owned business, at least 51 percent of the stock is owned by one or more veterans, with the management and daily business operations controlled by one or more veterans.

**Woman-Owned Small Business (WOSB)**

A small business that is at least 51 percent owned by one or more women. In the case of any publicly owned business, at least 51 percent of the stock is owned by one or more women, with the management and daily business operations controlled by one or more women.