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(1) Offers from small disadvantaged business concerns that have not waived the evaluation adjustment; or, if a price evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis, offers from small disadvantaged business concerns, whose address is in such a region, that have not waived the evaluation adjustment;

(2) An otherwise successful offer of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.403;

(3) An otherwise successful offer where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(4) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution; or

(5) For DoD acquisitions, an otherwise successful offer of qualifying country end products (see DFARS 225.000-70 and 252.225-7001).

(b) Apply the factor to a line item or a group of line items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the price evaluation adjustment.

(c) Do not evaluate offers using the price evaluation adjustment when it would cause award, as a result of this adjustment, to be made at a price that exceeds fair market price by more than the factor as determined by the Department of Commerce (see 19.202-6(a)).

[63 FR 35724, June 30, 1998, as amended at 63 FR 52427, Sept. 30, 1998; 64 FR 36223, July 2, 1999; 64 FR 72419, Dec. 27, 1999]

19.1104 Contract clause.

Insert the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, in solicitations and contracts when the circumstances in 19.1101 and 19.1102 apply. If a price evaluation adjustment is authorized on a regional basis, the clause shall be included in the solicitation even if the place of performance is outside an authorized region. The contracting officer shall in-

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sert the authorized price evaluation adjustment factor. The clause shall be used with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation. The clause shall be used with its Alternate II when a price evaluation adjustment is authorized on a regional basis.

[63 FR 52427, Sept. 30, 1998, as amended at 64 FR 36223, July 2, 1999]

Subpart 19.12—Small Disadvantaged Business Participation Program

SOURCE: 63 FR 36123, July 1, 1998, unless otherwise noted.

19.1201 General.

This subpart addresses the evaluation of the extent of participation of small disadvantaged business (SDB) concerns in performance of contracts in the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce (see 19.201(b)), and to the extent authorized by law. Two mechanisms are addressed in this subpart—

(a) An evaluation factor or subfactor for the participation of SDB concerns in performance of the contract; and

(b) An incentive subcontracting program for SDB concerns.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

19.1202 Evaluation factor or subfactor.

19.1202-1 General.

The extent of participation of SDB concerns in performance of the contract, in the NAICS Industry Subsector as determined by the Department of Commerce, and to the extent authorized by law, shall be evaluated consistent with this section. Participation in performance of the contract includes joint ventures, teaming arrangements, and subcontracts. Credit under the evaluation factor or subfactor is not available to SDB concerns that receive a price evaluation adjustment under Subpart 19.11. If an SDB concern waives the price evaluation adjustment

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at Subpart 19.11, participation in performance of that contract includes the work expected to be performed by the SDB concern at the prime contract level.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

19.1202-2 Applicability.

(a) Except as provided in paragraph (b) of this subsection, the extent of participation of SDB concerns in performance of the contract in the authorized NAICS Industry Subsector shall be evaluated in competitive, negotiated acquisitions expected to exceed \$500,000 (\$1,000,000 for construction).

(b) The extent of participation of SDB concerns in performance of the contract in the authorized NAICS Industry Subsector (see paragraph (a) of this subsection) shall not be evaluated in—

(1) Small business set-asides (see subpart 19.5) and HUBZone set-asides (see subpart 19.13);

(2) 8(a) acquisitions (see Subpart 19.8);

(3) Negotiated acquisitions where the lowest price technically acceptable source selection process is used (see 15.101-2); or

(4) Contract actions that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

[63 FR 36123, July 1, 1998, as amended at 63 FR 70272, Dec. 18, 1998; 65 FR 46057, July 26, 2000]

19.1202-3 Considerations in developing an evaluation factor or subfactor.

In developing an SDB participation evaluation factor or subfactor for the solicitation, agencies may consider—

(a) The extent to which SDB concerns are specifically identified;

(b) The extent of commitment to use SDB concerns (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(c) The complexity and variety of the work SDB concerns are to perform;

(d) The realism of the proposal;

(e) Past performance of offerors in complying with subcontracting plan

goals for SDB concerns and monetary targets for SDB participation; and

(f) The extent of participation of SDB concerns in terms of the value of the total acquisition.

[63 FR 36123, July 1, 1998, as amended at 64 FR 36224, July 2, 1999]

19.1202-4 Procedures.

(a) The solicitation shall describe the SDB participation evaluation factor or subfactor. The solicitation shall require offerors to provide, with their offers, targets, expressed as dollars and percentages of total contract value, in each of the applicable, authorized NAICS Industry Subsector, and a total target for SDB participation by the contractor, including joint venture partners, and team members, and a total target for SDB participation by subcontractors. The solicitation shall require an SDB offeror that waives the SDB price evaluation adjustment in the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, to provide with its offer a target for the work that it intends to perform as the prime contractor. The solicitation shall state that any targets will be incorporated into and become part of any resulting contract. Contractors with SDB participation targets shall be required to report SDB participation.

(b) When an evaluation includes an SDB participation evaluation factor or subfactor that considers the extent to which SDB concerns are specifically identified, the SDB concerns considered in the evaluation shall be listed in the contract, and the contractor shall be required to notify the contracting officer of any substitutions of firms that are not SDB concerns.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

19.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer may encourage increased subcontracting opportunities in the NAICS Industry Subsector as determined by the Department of Commerce for SDB concerns in negotiated acquisitions by providing monetary incentives (see the clause at