

Federal Acquisition Regulation

19.202-4

(i) Proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) Delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

(iii) Proposed acquisition cannot be structured so as to make it likely that small businesses can compete for the prime contract;

(iv) Consolidated construction project cannot be acquired as separate discrete projects; or

(v) Bundling is necessary and justified.

(3) The 30-day notification process shall occur concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA procurement center representative's recommendation, made in accordance with 19.402(c)(2), the contracting officer shall document the basis for the rejection and notify the SBA procurement center representative in accordance with 19.505.

[48 FR 42240, Sept. 19, 1983, as amended at 56 FR 67132, Dec. 27, 1991; 57 FR 60581, Dec. 21, 1992; 64 FR 72444, Dec. 27, 1999; 65 FR 46055, July 26, 2000]

19.202-2 Locating small business sources.

The contracting officer must, to the extent practicable, encourage maximum participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in acquisitions by taking the following actions:

(a) Include on mailing lists all established and potential small business sources, including those located in labor surplus areas and HUBZones, if the concerns have submitted acceptable applications or appear from other representations to be qualified small business concerns.

(b) Before issuing solicitations, make every reasonable effort to find additional small business concerns, unless

lists are already excessively long and only some of the concerns on the list will be solicited. This effort should include contacting the agency SBA procurement center representative, or if there is none, the SBA.

(c) Publicize solicitations and contract awards through the Government-wide point of entry (see subparts 5.2 and 5.3).

[48 FR 42240, Sept. 19, 1983, as amended at 63 FR 70268, Dec. 18, 1998; 65 FR 60544, Oct. 11, 2000; 66 FR 27413, May 16, 2001]

19.202-3 Equal low bids.

In the event of equal low bids (see 14.408-6), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

[60 FR 48261, Sept. 18, 1995]

19.202-4 Solicitation.

The contracting officer must encourage maximum response to solicitations by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by taking the following actions:

(a) Allow the maximum amount of time practicable for the submission of offers.

(b) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined.

(c) Send solicitations to (1) all small business concerns on the solicitation mailing list, or (2) a pro rata number of small business concerns when less than a complete list is used.

(d) Provide to any small business concern, upon its request, a copy of bid sets and specifications with respect to any contract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business

19.202-5

must comply when doing business with other than the Government.

[48 FR 42240, Sept. 19, 1983, as amended at 63 FR 70268, Dec. 18, 1998; 65 FR 60544, Oct. 11, 2000]

19.202-5 Data collection and reporting requirements.

Agencies must measure the extent of small business participation in their acquisition programs by taking the following actions:

(a) Require each prospective contractor to represent whether it is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern (see the provision at 52.219-1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see subpart 4.6).

[48 FR 42240, Sept. 19, 1983, as amended at 60 FR 48261, Sept. 18, 1995; 63 FR 70268, Dec. 18, 1998; 65 FR 60544, Oct. 11, 2000]

19.202-6 Determination of fair market price.

(a) The fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404-1(b) for—

(1) Total and partial small business set-asides (see subpart 19.5);

(2) HUBZone set-asides (see subpart 19.13);

(3) Contracts utilizing the price evaluation adjustment for small disadvantaged business concerns (see subpart 19.11); and

(4) Contracts utilizing the price evaluation preference for HUBZone small business concerns (see subpart 19.13).

(b) For 8(a) contracts, both with respect to meeting the requirement at 19.806(b) and in order to accurately estimate the current fair market price,

48 CFR Ch. 1 (10-1-02 Edition)

contracting officers shall follow the procedures at 19.807.

[52 FR 38189, Oct. 14, 1987, as amended at 53 FR 43390, Oct. 26, 1988; 54 FR 46005, Oct. 31, 1989; 62 FR 51270, Sept. 30, 1997; 63 FR 35722, June 30, 1998; 63 FR 70268, Dec. 18, 1998]

Subpart 19.3—Determination of Small Business Status for Small Business Programs

19.301 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation. An offeror may represent that it is a small business concern in connection with a specific solicitation if it meets the definition of a small business concern applicable to the solicitation and has not been determined by the Small Business Administration (SBA) to be other than a small business.

(b) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the concern's small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning a specific representation shall be referred to the SBA in accordance with 19.302.

(c) An offeror's representation that it is a small business is not binding on the SBA. If an offeror's small business status is challenged, the SBA will evaluate the status of the concern and make a determination, which will be binding on the contracting officer, as to whether the offeror is a small business. A concern cannot become eligible for a specific award by taking action to meet the definition of a small business concern after the SBA has determined that it is not a small business.

(d) If the SBA determines that the status of a concern as a small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or