

CHAPTER 3. SOCIOECONOMIC PROCUREMENT PROGRAMS

- 3-1 POLICY. Departmental procurement officials are responsible for implementing the requirements of socioeconomic programs that affect the procurement process. It is the policy of the Department to maximize procurement opportunities for, and award a fair portion of the Department's total procurement requirements to small businesses, 8(a) contractors, minority business enterprises, historically underutilized business zone (HUBZone) businesses, veteran-owned and service-disabled veteran-owned businesses, women-owned businesses, and historically black colleges and universities. To implement this policy, the Department has established two initiatives: the Procurement Opportunity Program; and, the Minority Business Enterprise Procurement Program. The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), at Headquarters, is responsible for both initiatives. This includes Department-wide responsibility for developing, implementing, executing, and managing these initiatives, providing advice on these initiatives, and representing HUD before other government agencies on matters primarily affecting small and small disadvantaged businesses, as well as the other targeted organizations mentioned above. It is also the Department's policy to comply with all other socioeconomic programs as further described in this chapter.
- 3-2 AUTHORITIES AND GUIDANCE. The principal authorities and guidance for the Department's socioeconomic procurement programs and initiatives are listed below. Specific statutory authority for the various programs and initiatives may be found in the following:
- A. Regulations.
1. Small Business Programs -- FAR Part 19 and HUDAR Part 2419.
 2. Federal Labor Laws -- FAR Part 22 and HUDAR Part 2422.
 3. Environmental Protection, Energy Conservation, Occupational Safety, Procurement of Recovered Materials, Toxic Chemical Release Reporting - - FAR Part 23.
 4. Indian Incentive Program -- FAR Subpart 26.1.
 5. Disaster or Emergency Assistance Activities (preference for local businesses) -- FAR Subpart 26.2.
 6. Historically Black Colleges and Universities and Minority Institutions -- FAR Subpart 26.3.
- B. Executive Orders (E.O.s) and Statutes.

1. E.O. 12873, October 20, 1993; E.O. 12780, October 31, 1991, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy.
 2. E.O. 12432, July 14, 1983, Minority Business Enterprise Development.
 3. E.O. 12138, May 18, 1979, National Women's Business Enterprise Policy.
 4. E.O. 11625, October 13, 1971, National Program for Minority Business Enterprise.
 5. E.O. 12928, Sept. 16, 1994, Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities (HBCU), and Minority Institutions (MI).
 6. E.O. 13170, October 6, 2000, Increasing Opportunities and Access for Disadvantaged Businesses.
 7. E.O. 13157, May 23, 2000, Increasing Opportunities for Women-Owned Small Businesses.
 8. Public Law 106-50, Veteran's Entrepreneurship and Small Business Development Act of 1999.
- C. Presidential Memorandum to Heads of Executive Departments and Agencies, "Continued Commitment to Small, Small Disadvantaged, and Small Women-Owned Businesses in Federal Procurement," dated October 13, 1994.
- D. Other Guidance. The OSDBU has issued a "Small Business Resource Guide" which includes guidance on the Procurement Opportunity Program and the Minority Business Enterprise Procurement Program. The guide includes current Departmental goals, which the OSDBU negotiates with the Small Business Administration (SBA). The guide is located on the OSDBU intranet site.
- E. Procurement Preference Goals. In consultation with SBA, HUD establishes annual Department-wide goals for awarding contracts to small, small disadvantaged, women-owned small, HUBZone, and service-disabled veteran-owned small businesses. The goals are available from the OSDBU. (Note: OSDBU does not establish separate goals for 8(a) awards. Section 8(a) awards are counted in the total for small disadvantaged business awards.)

3-3 PROCUREMENT OPPORTUNITY PROGRAM.

A. Responsibilities.

1. Office of Small and Disadvantaged Business Utilization (OSDBU). This office was established in response to Public Law 95-507, the Amendments to the Small Business Act of 1958. The OSDBU's contracting-related responsibilities include:
 - a. The development and administration of the Department's Procurement Opportunity Program (POP). The POP's mission is to provide direct HUD contracting and subcontracting opportunities to the businesses and organizations designated eligible for preferential treatment by the authorities listed in paragraph 3-2. Through the POP, the OSDBU has implemented Section 8 (subcontracting) and Section 15 (prime contracting) of the Small Business Act;
 - b. Establishing, in concert with the Small Business Administration, HUD's goals for the participation of the various types of small and small disadvantaged businesses in its direct procurement of supplies and services, and monitoring and reporting to SBA the Department's achievements in meeting those goals;
 - c. Reviewing strategic procurement plans (see section 4-1) in accordance with the CMRB rules with regard to the Department's Small Business goals and proposed strategies for meeting them;
 - d. Reviewing individual requests for contract actions for new work (including indefinite-delivery contracts) exceeding the simplified acquisition threshold (see paragraph 4-2.B.2) for possible performance by small businesses to meet current Departmental goals; and,
 - e. Reviewing subcontracting plans for HUD prime contracts (see paragraph D below).
2. FCO Directors. Each FCO Director shall:
 - a. Appoint an SBS responsible for the FCO;
 - b. Consolidate the goals for his/her jurisdiction and forward a copy to the Deputy CPO; and,
 - c. Ensure that the SBS is provided with a copy of the annual procurement plan. Field Contracting Officers shall be responsible

for informing the cognizant SBS of any changes in the plan and for providing him/her with a description of new requirements. The SBS's review pursuant to HUDAR 2419.201(d)(3) will consist of reviewing the descriptions provided in the annual plan. Any detailed review shall be limited to those procurement actions where the specialist has reason to believe that the Contracting Officer's determination to not reserve the action for small or small disadvantaged businesses is in error or where the Contracting Officer has specifically requested a detailed review.

3. Field Small Business Specialist (SBS). Each FCO Director appoints an SBS. The SBS's basic responsibilities are set forth at HUDAR 2419.201(d). The Field SBS shall also:
 - a. Provide technical assistance to field program offices in developing their annual goals and on the requirements of the Department's POP and MBE programs;
 - b. Serve as a principal contact point for small businesses interested in doing business with HUD. He/she shall take steps to assist small businesses to market their services to appropriate program offices. Such steps may include directing firms to the appropriate program staff, determining those services which the firm provides that HUD would be likely to obtain through contracts, assisting the program offices and/or the Contracting Officer in obtaining information about firms (see also paragraph 4-2.B.2); and,
 - c. Review individual requests for contract actions originating and to be awarded in the FCO for new work (including indefinite-delivery contracts) exceeding the simplified acquisition threshold goals (see paragraph 4-2.B.2) for possible performance by small businesses to meet current Departmental goals.
4. Program Offices.
 - a. Each program office shall perform an analysis of its requirements and establish reasonable but challenging goals for all components of the POP. This process shall take place during the formulation of the office's annual procurement plan.
 - b. Each program office shall appoint a representative to work with the OSDBU, or the cognizant field SBS, in establishing goals and monitoring accomplishments. The representative will work with the cognizant contracting activity to coordinate the processing of the procurement requests.

B. Small Business Set-Asides (see also FAR Subpart 19.5, HUDAR Subpart 2419.5, FAR 13.003, and paragraph 9-2 B).

C. Contracting with the Small Business Administration (SBA) under Section 8(a) of the Small Business Act.

1. Contracts executed with the SBA under Section 8(a) shall be awarded in accordance with the procedures set forth in FAR Subpart 19.8 and HUDAR Subpart 2419.8.
2. The Contracting Officer may, at his/her discretion contract with the SBA. The Contracting Officer shall consider the recommendations of the Small Business Specialist and the initiating program office (see paragraph 4-2.B.2.b) in making his/her decision.
3. The GTR is responsible for obtaining and providing to the Contracting Officer evaluations of proposals from 8(a) business concerns.
4. Contracting Officers shall execute Section 8(a) contracts directly with 8(a) business concerns in accordance with HUD's memorandum of understanding with SBA, dated May 6, 1998, as implemented by deviation to FAR Subpart 19.8, executed by the CPO on December 5, 2001. The deviation is available online at the OCPO intranet site:

http://hudweb.hud.gov/po/arc/connect/regs/far/deviate/far19_8.htm

D. The Small Business Subcontracting Program. FAR Subpart 19.7 requires prime contractors that are not small businesses to establish goals and report on their attainment for subcontracting with small businesses. HUDAR Subpart 2419.7 contains additional requirements for subcontracting with small businesses.

1. Submission, Review and Negotiation of Subcontracting Plans.
 - a. Plan Submission. Offerors must submit subcontracting plans with their offers as required by HUDAR clause 2452.219-70 and its Alternate I (see also paragraph 2 below regarding indefinite-delivery contracts).
 - b. Determination of No Subcontracting Opportunities. The Contracting Officer shall make any determination that subcontracting opportunities do not exist for a particular action (including task orders, see paragraph 2 below) in accordance with FAR 19.705-2. All determinations shall be written.
 - c. Subcontracting Plan Review.

- (1) The Contracting Officer shall review proposed subcontracting plans in accordance with FAR 19.705-4 for compliance with the plan requirements of FAR 19.704. If the plan is lacking any of the required elements required by FAR 19.704 or is otherwise deficient, the Contract Specialist shall obtain the missing or additional information before sending the plan to the SBS and/or the OSDDBU for review.
- (2) Once he/she has completed his/her review, the Contracting Officer shall forward copies of the plan to the following for review and comment:
 - (a) The OSDDBU for Headquarters actions; and,
 - (b) The SBS within the FCO for field actions.

Exhibit 3-1 contains a sample transmittal memorandum.

- (3) The OSDDBU or SBS shall promptly review the plan and provide any comments to the Contracting Officer.
- d. Once the Contracting Officer receives the OSDDBU's/SBS's comments, he/she shall negotiate any needed revisions. In addition to the guidance provided in FAR 19.705-4, the Contracting Officer shall use the following information in developing a pre-negotiation position and in negotiating the final subcontracting plan before executing the contract action:
- (1) The Department's current annual goals;
 - (2) Historic subcontracting opportunities, if any, for the type of requirement being fulfilled (e.g., data from subcontracting plan reports, SF-294, submitted under similar contracts); and,
 - (3) The potential opportunities under the immediate requirement.
- e. The Contracting Officer shall obtain the concurrence of the OSDDBU when the negotiated subcontracting plan goals are below the Department's goals. The Contracting Officer shall also include an explanation for the lower goals in the summary of negotiations.

- f. The Contracting Officer shall ensure that a copy of the final plan and the applicable contract action (e.g., new award, task order) is provided to the SBS and the OSDBU.
 - g. The SBS and the OSDBU shall maintain files containing subcontracting plans and reports during the life of the contract under which the plans and reports were made. Upon completion of the contract, the SBS or the OSDBU shall provide the Contracting Officer with any information contained in the reports or plan as requested by the Contracting Officer.
- 2. Indefinite-Delivery Contracts. Typically, indefinite-delivery task order contracts are awarded without authorizing the contractor to perform any work or obligating funds. Work is obtained, and obligations are created subsequent to award via the issuance of task orders. Therefore, indefinite-delivery contracts that contemplate the issuance of any task orders that will individually exceed \$500,000 require both a contract-level and separate task order-specific subcontracting plans.
 - a. The contract-level plan submitted with offers shall set the broad subcontracting goals applicable to the work anticipated to be obtained under the contract. At the point of contract award, the plan shall comply with the requirements of FAR 19.704, except that it will not include specific percentage and dollar goals unless a task order is issued concurrent with contract award. In such case, the requirements set forth in paragraph b below shall also apply at time of award.
 - b. Each task order exceeding \$500,000 shall require a detailed subcontracting plan. The plan shall elaborate upon the contract-level plan by establishing percentage and dollar subcontracting goals for the order and identifying the specific effort to be subcontracted and the subcontractors.
- 3. Monitoring and Evaluating Subcontracting Performance. In addition to the post-award requirements set forth in FAR 19.705-6 and 19.706:
 - a. The OSDBU shall promptly review all subcontracting plan reports (SF-294 and SF-295) to assess the contractor's progress in meeting its planned goals and report the results of such reviews to the Contracting Officer. (Note: HUDAR clause 2452.219-71 requires contractors to submit one copy of each SF-294 and SF-295 directly to OSDBU.) The OSDBU shall provide the Contracting Officer with a final report of the contractor's performance upon completion of the contract.

- b. The Contracting Officer shall consult with the OSDBU before taking any action relative to deficient performance by the contractor regarding the goals.
 - c. The Contracting Officer shall request a revised subcontracting plan whenever the dollar value of the contract is increased by an increment of \$500,000 or more (e.g., by the issuance of a task order).
 - d. Contracting Officers shall review the final performance reports of contractors when determining their responsibility and/or when subcontracting performance is a significant evaluated factor under subsequent contract awards (see paragraph 5-8.B). The OSDBU shall assist Contracting Officers, as requested, in evaluating such past performance.
 - e. The Contracting Officer shall provide copies of correspondence related to contractor noncompliance with an established plan, findings of breach of contract, and/or the assessment of related liquidated damages pursuant to FAR 19.705-7 to the SBS and the OSDBU.
- E. Women-Owned Small Business Program. Although Federal agencies may not give preference to women-owned small businesses, the OSDBU does establish annual goals for the award of contracts to women-owned small businesses.
- F. Small Disadvantaged Business (SDB) Program. As a means of ensuring SDBs (see FAR 2.101 for detailed definition) the maximum practicable opportunity to compete for and receive Federal procurement opportunities, small businesses certified as SDBs can receive a price preference (see FAR Subpart 19.11) or evaluation credit (see FAR Subpart 19.12) when competing for certain procurements as determined by the U.S. Department of Commerce. The Department of Commerce determines which industrial categories are eligible for the SDB contract price preference and evaluation credits. All Section 8(a) Business Development participants are automatically certified as SDBs. (Note: Awards to SDBs who are 8(a) business concerns are not considered 8(a) awards unless made under the 8(a) program.) The price preference factor is posted at:

<http://www.arnet.gov/References/sdbadjustments.htm>
- G. Veteran-Owned Small Businesses. In accordance with Public Law 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999, HUD establishes goals for prime contracts with small businesses owned and controlled by service-disabled veterans. This is in addition to the subcontracting goals for such concerns (see paragraph D above).

- H. Historically Underutilized Business Zone (HUBZone) Program (see FAR Subpart 19.13). Authorized by the HUBZone Act of 1997, Title VI of Public Law 105-135, this program provides Federal contracting opportunities for certain qualified small business concerns located in economically distressed communities. The goal of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in HUBZone areas in order to increase employment opportunities, stimulate capital investments in those areas, and empower communities through economic leveraging. Contracting Officers are required to set aside procurements for HUBZone businesses when the conditions in FAR Subpart 19.13 are met. HUBZone areas are determined by census tracts data including income levels, unemployment rates, and Native American reservation boundaries. In order to qualify as a HUBZone business, the business must be small, owned by a U.S. citizen, the principal office must be located in a HUBZone, and at least thirty-five percent of the employees must reside in a HUBZone. The SBA formally certifies firms as HUBZone businesses. HUBZone businesses can receive sole-source or set-aside Federal contracts or receive a price preference up to ten percent when competing for full and open competition procurements.
- I. Historically Black Colleges and Universities (see FAR Subpart 26.3). Executive Order 12928 requires the Department to establish annual plans to increase the ability of historically Black colleges and universities to participate in Federally-sponsored programs including contracts, grants, and cooperative agreements. The Director of the OSDBU is responsible for coordinating with all program offices, developing the annual plans regarding the participation of historically Black colleges and universities in Departmental programs, and ensuring that Departmental reporting requirements are fulfilled.

3-4 MINORITY BUSINESS ENTERPRISE (MBE) PROCUREMENT PROGRAM.

- A. Policy (see HUDAR Subpart 2426.70).
- B. Responsibilities.
 - 1. The OSDBU Director develops Departmental MBE plans and policies, provides advice and guidance to the Secretary and POHs on MBE functions, reviews and makes recommendations on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.
 - 2. POHs are responsible for ensuring full MBE participation within their respective programs office activities. This includes, but is not limited to, establishing MBE goals for HUD funded programs, monitoring MBE participation, and reporting MBE participation data to the OSDBU.

3. Regional Directors and Field Office Directors, in consultation with the Assistant Secretary for Fair Housing and Equal Opportunity and the OSDBU, are responsible for appointing MBE coordinators within their respective areas.
 4. MBE Coordinators are responsible for outreach and other activities designed to encourage the use of MBEs in HUD-assisted programs.
 5. HCAs are responsible for ensuring compliance with the requirements of HUDAR 2426.70 for contracts that are issued directly by HUD under the authority of the FAR Part 19 and HUDAR Part 2419.
- C. Indirect Contracting Opportunities. The Department's total MBE program includes "indirect" contracting opportunities created at the State and local levels by HUD's grant and loan programs. Departmental contracting activities will only be involved in such "indirect" opportunities in an advisory capacity to the MBE Coordinator.

3-5 PROCUREMENT OF RECOVERED MATERIALS (FAR Subpart 23.4).

A. Policy.

1. It is the policy of the Department to procure products containing recovered materials to the greatest extent practicable. Section 6002 of the Resource Conservation and Recovery Act (RCRA) and FAR Subpart 23.4 require the development of an Affirmative Procurement Program for Recovered Materials. The Affirmative Procurement Program assures that items composed of recovered materials will be purchased to the maximum extent practicable, consistent with Federal law and procurement regulations. Specific guidance is also provided at FAR Subpart 23.4. Executive Order (EO) 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition," dated September 14, 1998, reinforces the Federal government's buy-recycled efforts and provides additional guidance.
2. In accordance with FAR 23.404, this section 3-5 establishes the Department's Affirmative Procurement Program for all designated guideline items. The program has four parts:
 - a. A preference program;
 - b. A promotion program;
 - c. Procedures for obtaining and verifying estimates and certifications of the content of recovered materials; and,

- d. An annual review and monitoring.

B. Procurement Guidelines for Designated Items.

1. The Environmental Protection Agency (EPA) has established a Comprehensive Procurement Guideline (CPG) program to promote the use of materials recovered from solid waste. The CPG program is authorized by Congress under Section 6002 of the Resource Conservation and Recovery Act (RCRA) and Executive Order 13101. Under the CPG program, EPA issues Recovered Materials Advisory Notices (RMANs), which provide purchasing guidance and recommend recovered and post-consumer material content levels for designated items. RMAN recommendations are guidance and not mandatory. Current RMANs and additional information on the CPG program are available from EPA's web site at:

<http://www.epa.gov/cpg/products.htm>.

2. The Department does not routinely procure any of the designated items through formal contracts (i.e., awards made pursuant to Parts 14 and 15 of the FAR). Those designated items directly purchased by HUD (e.g., paper and paper products, plastic desktop accessories, waste receptacles, etc.) are obtained through the Governmentwide Commercial Purchase Card Program, GSA Customer Supply Catalogs and Federal Supply Schedules, and the Government Printing Office. Should the need arise to procure any designated items through formal contracts, the Deputy CPO will provide all contracting activities with the solicitation provisions and contract clauses for inclusion in applicable solicitations to capture the current estimates and certifications.

C. Preference Program.

1. E.O. 13101 requires that 100 percent of purchases of designated products meet or exceed the EPA guidelines, unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is not available at a reasonable price. Purchases below the micropurchase threshold do not require a written justification.
2. Program Offices shall include in their requests for contract services, a justification for any exemption from the requirements of this program. The request will not be processed until a justification is received. If such a request is received and the justification is absent, the Contracting Officer will advise the program office of recycled alternatives, if available, and will either modify the request to purchase the recycled materials or will

obtain the justification from the program office (see FAR Subpart 23.4 for guidance on required contract file documentation.)

- D. Promotion Program. The CPO will remind Departmental staff of the requirement to purchase items composed of recovered materials to the maximum extent practicable by posting notices from time to time on the CPO's intranet site. The Department may take other action, as deemed appropriate, to promote its desire to buy recycled materials. Such actions may include, but are not limited to, including explicit statements in solicitations; and, discussing HUD's commitment to recycling at pre-bid and pre-proposal conferences.
- E. Estimation and Certification. Vendors must estimate the percentage and certify the actual content of recovered materials in their products. Such estimates and certifications are generally expressed as a percentage of total content.
- F. Incentives. When using performance-based contracting, the Contracting Officer may include incentives (monetary or non-monetary) for the use of recovered materials above the EPA guideline minimums. The Contracting Officer shall include a listing of the applicable materials and their minimum content requirements. The minimum content may not be less than the EPA guidelines in effect.
- G. Annual Review and Monitoring. If the Department purchases items where estimates and certifications are required per paragraph E above, the Contracting Officer shall ensure that the range of estimates and certifications received are reviewed to determine if the highest percentage of recovered materials practicable is being used.
- H. Review and Reporting. Executive Order 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition," requires that the Department review the effectiveness of its affirmative procurement program and report its progress to the EPA and the Office of Federal Procurement Policy biennially. The OCPO shall prepare the report based on input from Headquarters and field contracting activities. The OCPO will provide specific guidance to all contracting activities on information collection and reporting.

Sample Small Business Subcontracting Plan Transmittal Memorandum

MEMORANDUM FOR: *[name]* Small Business Specialist

FROM: *[name of Contracting Officer]*

SUBJECT: Review of Small Business Subcontracting Plan

I have reviewed the attached subcontracting plan under and found it to be adequate in accordance with the requirements of FAR 19.704. Please provide your comments on the plan to *[insert name of Specialist]* no later than *[date]*.

Solicitation/Contract Number:

Contract/Order Title:

Estimated Dollar Amount:

Period of Performance:

Contract Type: