

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

<b>MD 11.4</b>	<b>NRC SMALL BUSINESS PROGRAM</b>	<b>DT-22-07</b>
<i>Volume 11:</i>	Procurement	
<i>Approved by:</i>	Daniel H. Dorman Executive Director for Operations	
<i>Date Approved:</i>	July 28, 2022	
<i>Cert. Date:</i>	N/A, for the latest version of any NRC directive or handbook, see the <a href="#">online MD Catalog</a> .	
<i>Issuing Office:</i>	Office of Small Business and Civil Rights	
<i>Contact Name:</i>	Anthony Briggs	Tira Patterson

**EXECUTIVE SUMMARY**

Management Directive 11.4, “NRC Small Business Program,” is revised to—

- Incorporate updates and changes to small business-related laws;
- Reflect new responsibilities for the Director, Acquisition Management Division, Office of Administration when a conversion of an activity is proposed;
- Add new duties and activities performed by the Small Business Program;
- Clarify organizational responsibilities; and
- Include delegations of authority.

**TABLE OF CONTENTS**

<b>I. POLICY.....</b>	<b>2</b>
<b>II. OBJECTIVES .....</b>	<b>2</b>
<b>III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY.....</b>	<b>3</b>
A. Chairman.....	3
B. Commission.....	3
C. Executive Director for Operations (EDO) .....	3
D. Inspector General (IG).....	3

---

For updates or revisions to policies contained in this MD that were issued after the MD was signed, please see the Yellow Announcement to Management Directive index ([YA-to-MD index](#)).

E. Director, Office of Small Business and Civil Rights (SBCR).....	4
F. Small Business Program Manager, Office of Small Business and Civil Rights (SBCR).....	5
G. Office Directors and Regional Administrators .....	5
H. Director, Acquisition Management Division (AMD), Office of Administration (ADM) .....	6
I. Senior Procurement Executive .....	7
J. Competition Advocate, Director of AMD, ADM.....	7
K. Strategic Sourcing Group (SSG).....	7
<b>IV. APPLICABILITY .....</b>	<b>7</b>
<b>V. DIRECTIVE HANDBOOK .....</b>	<b>8</b>
<b>VI. EXCEPTIONS .....</b>	<b>8</b>
<b>VII. REFERENCES.....</b>	<b>8</b>

## I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to provide the maximum practicable prime and subcontract opportunities to small businesses in support of the agency's mission and operational requirements. This policy ensures compliance with the law, support of Federal economic and business development initiatives, promotion of equity in procurement practices, achievement of agency small business contracting goals, and fosters an innovative and competitive supplier.

## II. OBJECTIVES

- Comply with and fully support Federal laws and policies governing the Federal small business program in the areas of compliance, technical assistance, outreach, and achievement of small business goals.
- Establish and implement a comprehensive review process for NRC procurement actions to ensure compliance with small business laws and support of Federal business development initiatives.
- Provide technical assistance support to the Acquisition Management Division (AMD), Office of Administration (ADM) and NRC offices to support acquisition planning and market research activities, provide guidance with small business set-asides and sole source awards, and explore innovative procurement practices.
- Participate in outreach activities to educate the small business community on how to identify and respond to NRC prime and subcontract opportunities and remove barriers to navigating the Federal procurement process.

- 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 toward the achievement of the Federal small business contract goals.

### **III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY**

#### **A. Chairman**

1. Designates the Director, Office of Small Business and Civil Rights (SBCR) as the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). The Director of OSDBU may re-delegate this authority only to the Program Manager for Small Business, SBCR ([ML12054A690](#)).
2. Delegates the agency administrative functions, including procurement authority to the Executive Director for Operations (EDO). (Reorganization Plan No. 1 of 1980 § 2 (5 U.S.C. App. 1)).
3. Receives an annual briefing on small business activities and achievements of the agency's small business goals.
4. Reviews quarterly small business contract performance goaling and activity reports.

#### **B. Commission**

1. Receives an annual briefing on small business activities and achievements of the agency's small business goals.
2. Reviews quarterly small business contract performance goaling and activity reports.

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

1. As delegated by the Chairman, to the EDO, oversees all administrative functions of the agency, including procurement authority (Reorganization Plan No. 1 of 1980 § 2 (5 U.S.C. App. 1)).
2. Conducts the performance appraisal for the Director, SBCR, who serves as the Director, OSDBU (15 U.S.C. 644(k)(3)).

#### **D. Inspector General (IG)**

1. Investigates allegations of fraud, waste, and abuse to ascertain the facts regarding potential misconduct and its effect on the integrity of NRC programs and operations.
2. Investigates allegations of fraud and abuse related to 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.

5. Coordinates with AMD, ADM, (hereafter "ADM) for the conduct of pre-award and post-award external audits as required by the Federal Acquisition Regulation (FAR).

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

1. Serves as the Director of OSDBU and fulfills the responsibilities and duties established in Sections 8 and 15 of the Small Business Act, as amended. This authority may be re-delegated to the Small Business Program Manager ([ML12054A690](#)).
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 AMD and offices and regions as they relate to the NRC Small Business Program.
5. Establishes the NRC small business prime and subcontract goals program, monitors the results of the program on a quarterly basis, and prepares reports of NRC's small business contract performance in making small business awards.
6. 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.
7. Reviews NRC Form 827, "NRC Small Business Review," and NRC Form 828, "NRC Small Business Subcontracting Plan Review," 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.
8. Reviews proposed procurements in the Advance Procurement Plan (APP) that exceed the simplified acquisition threshold to make recommendations for small business participation for the required offices and regions and AMD.
9. Provides capability statements for small business vendors for agency requirements.
10. Reviews subcontracting plans for accuracy, completeness, and adequacy of small business usage.
11. Produces an annual agency forecast of contract opportunities, which identifies requirements suitable for small business participation, in coordination with office directors and AMD.

12. Reports small business information to the U.S. Small Business Administration (SBA) for inclusion in its annual small business procurement scorecard, in collaboration with AMD.
13. Serves as a member of the Strategic Sourcing Group (SSG).
14. Approves exceptions to the provisions of Handbook 11.4 unless the exceptions raise significant policy issues.
15. Reviews memoranda from the Director of AMD when a decision to convert an activity performed by a small business concern to a Federal employee has been proposed to advise ways to mitigate the impact on small businesses.

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

1. Carries out and manages the activities listed under Sections 8 and 15 of the Small Business Act, as amended.
2. Manages the compliance review activities of the Small Business Program, which includes overseeing the small business acquisition strategies and subcontracting plan reviews.
3. Manages and provides technical assistance support to agency staff regarding acquisition planning and market research activities, guidance with small business set-asides and sole source awards, and consideration of innovative procurement practices.
4. Participates and oversees outreach activities designed to educate the small business community on how to conduct business with the agency and navigate the Federal procurement process.
5. Monitors progress toward achievement of agency prime and subcontract small business goals to ensure goals are met or exceeded.
6. Drafts and prepares annual Congressional and SBA reports.
7. Designs and develops resources to assist businesses with identifying prime and subcontract opportunities.

**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 participates 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. Ensures small business and subcontracting plan reviews are sent to the Small Business Program Manager through [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@nrc.gov) for review and concurrence.
2. Ensures that activity conversion notifications are sent to the Small Business Program Manager through [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@nrc.gov) for review to provide guidance mitigating the impact on small businesses.
3. Determines, through the contracting officer, the acquisition method to be employed for each procurement action submitted to AMD. These determinations must consider the small business recommendations of the Director of SBCR and the Small Business Program Manager and, where feasible, ensure the inclusion of incentivized measures.
4. 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.
5. 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.
6. Ensures that small business participation is included during the acquisition phase of procurements in accordance with applicable statutes, regulations, Executive Orders, and Federal policy.
7. 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.
8. Facilitates access to advance procurement plans.
9. Provides a memorandum to notify the Director of SBCR when proposing a conversion of an activity performed by a small business to a Federal employee explaining the reason for the conversion.

**I. Senior Procurement Executive**

Oversees managing the agency's procurement system and implementing unique procurement policies, regulations, and standards ([ML20322A367](#)).

**J. Competition Advocate, Director of AMD, ADM**

1. Ensures the agency carries out the full complement of duties and responsibilities established in FAR 6.502 ([ML12341A205](#)).
2. The Competition Advocate—
  - (a) Reviews and approves Justifications for Other than Full and Open Competition for proposed contracts or modifications exceeding the dollar threshold in FAR 6.304(a)(2).
  - (b) Reviews and approves exceptions to the requirement to place notices of proposed contract actions in the System for Award Management based upon unusual and compelling urgency (FAR 5.202).
  - (c) Reviews and approves exceptions to the requirement for full and open competition for contracts of 1 year or less in duration based upon unusual and compelling urgency (FAR 6.302-2). (Please note that the EDO serves as the approving authority for sole source contracts with a period of performance exceeding 1 year. See MD 11.1, Section III.B.5 for more information.)
  - (d) Reviews and makes recommendations to the head of contracting activity (HCA) and regional administrators for ratification requests of unauthorized commitments greater than the micro-purchase threshold.

**K. 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 Materials, Waste, Research, State, Tribal Compliance, Administration, and Human Capital (DEDM), chair; Deputy Executive Director for Reactor Programs (DEDR); Deputy Chief Financial Officer (DCFO); Deputy Assistant General Counsel/Special Counsel for Acquisition (OGC); and the Director of SBCR.

**IV. APPLICABILITY**

The policy and guidance in this directive and handbook apply to all NRC employees who 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."
- 13 CFR Part 125, "Government Contracting Programs."
- 13 CFR Part 126, "HUBZone Program."
- 13 CFR Part 127, "Women-Owned Small Business Federal Contract Program."
- 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."
  - Part 13, "Simplified Acquisition Procedures."
  - Part 15.304, "Evaluation Factors and Significant Subfactors."
  - Part 19, "Small Business Programs."
- 48 FR Chapter 20, "Nuclear Regulatory Commission."

## Nuclear Regulatory Commission Documents

### Delegations of Authority–

Memorandum to R.W. Borchardt, Executive Director for Operations, from Gregory B. Jaczko, Chairman, “Designation of the Agency’s Director of the Office of Small and Disadvantaged Business Utilization,” May 31, 2012 ([ML12054A690](#)).

Memorandum to James C. Corbett, Director, Division of Contracts, Office of Administration from R. W. Borchardt, Executive Director for Operations, “Designation of the Agency’s Competition Advocate,” June 11, 2013 ([ML12341A205](#)).

Memorandum to Eleni Jernell, Director, Acquisition Management Division, Office of Administration, from Jennifer Golder, Chief Acquisition Officer, Office of Administration, April 13, 2021 ([ML20322A367](#)).

### Forms -

NRC Forms Library on SharePoint:  
<https://usnrc.sharepoint.com/teams/NRC-Forms-Library>.

NRC Form 827, “NRC Small Business Review.”

NRC Form 828, “NRC Small Business Subcontracting Plan Review.”

NRC Form 829, “NRC Small Business Subcontracting Plan.”

Management Directive 11.1, “NRC Acquisition of Supplies and Services.”

### Websites -

NRC Small Business Program SharePoint site:  
<https://usnrc.sharepoint.com/teams/SBCR-Small-Business-Program>.

NRC Small Business Program Website:  
<https://www.nrc.gov/about-nrc/contracting/small-business.html>.

## Office of Management and Budget (OMB) Documents

OMB Circular A-123, “Management’s Responsibility for Internal Control,” December 21, 2004, available at [https://obamawhitehouse.archives.gov/omb/circulars\\_a123\\_rev](https://obamawhitehouse.archives.gov/omb/circulars_a123_rev).

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

Office of Federal Procurement Policy, Office of Management and Budget, Policy Memorandum, "Increasing Opportunities for Small Businesses in Purchase Card Micro-Purchases," dated December 19, 2011, <https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/procurement/memo/increasing-opportunities-for-small-businesses-in-purchase-card-micro-purchases.pdf>.

### **Small Business Administration (SBA)**

SBA and Agencies Partnership Agreements The Small Business Administration and The U.S. Nuclear Regulatory Commission, <https://www.sba.gov/document/support--sba-and-agencies-partnership-agreements>.

SBA "Eligible NAICS for the Women-Owned Small Business Federal Contracting program, <https://www.sba.gov/document/support--qualifying-naics-women-owned-small-business-federal-contracting-program>.

SBA "Non-Manufacturer Rule Class Waiver List," <https://www.sba.gov/document/support-non-manufacturer-rule-class-waiver-list>.

U.S. Small Business Administration: <https://www.sba.gov>.

### **United States Code**

Community Economic Development Act of 1981 (42 U.S.C. Subchapter I).

Reorganization Plan No. 1 of 1980 § 2 (5 U.S.C. App. 1).

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

    "Additional Powers" (15 U.S.C. 637).

    "Awards or Contracts" (15 U.S.C. 644).

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

<b>DH 11.4</b>	<b>NRC SMALL BUSINESS PROGRAM</b>	<b>DT-22-07</b>
<i>Volume 11:</i>	Procurement	
<i>Approved by:</i>	Daniel H. Dorman Executive Director for Operations	
<i>Date Approved:</i>	July 28, 2022	
<i>Cert. Date:</i>	N/A, for the latest version of any NRC directive or handbook, see the <a href="#">online MD Catalog</a> .	
<i>Issuing Office:</i>	Office of Small Business and Civil Rights	
<i>Contact Name:</i>	Anthony Briggs	Tira Patterson

**EXECUTIVE SUMMARY**

Management Directive 11.4, “NRC Small Business Program,” is revised to—

- Incorporate updates and changes to small business-related laws;
- Reflect new responsibilities for the Director, Acquisition Management Division, Office of Administration when a conversion of an activity is proposed;
- Add new duties and activities performed by the Small Business Program;
- Clarify organizational responsibilities; and
- Include delegations of authority.

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>2</b>
<b>II.</b>	<b>NRC SMALL BUSINESS PROGRAM.....</b>	<b>3</b>
	A. General .....	3
	B. Portfolio of Small Business Programs .....	4
	C. Parity Among Small Business Programs.....	6
	D. Acquisition Planning and Market Research Support .....	6
	E. Activity Conversion .....	6
	F. Purchase Card Summary Review .....	7
	G. Small Business Goals.....	7
<b>III.</b>	<b>SMALL BUSINESS SET-ASIDES .....</b>	<b>7</b>

For updates or revisions to policies contained in this MD that were issued after the MD was signed, please see the Yellow Announcement to Management Directive index ([YA-to-MD index](#)).

A. General .....	7
B. Set-Aside Thresholds and Requirements.....	8
C. Nonmanufacturer Rule.....	9
D. Small Business Set-Aside Types .....	11
E. Repetitive Set-Aside Policy.....	12
F. Procedural Guidance for Small Business Program Review.....	12
<b>IV. SMALL BUSINESS SUBCONTRACTING .....</b>	<b>14</b>
A. General .....	14
B. Requirements .....	14
C. Small Business Subcontracting Goals .....	15
D. Procedural Guidance for Small Business Program Review.....	15
E. Small Business Subcontracting Plan Evaluation Factor .....	16
<b>V. THE SBA PROCUREMENT CENTER REPRESENTATIVE .....</b>	<b>16</b>
A. Role of the SBA Procurement Center Representative .....	16
B. Surveillance Reviews.....	17
C. Appeal Process .....	17
<b>VI. CONTRACTING CONSOLIDATION AND BUNDLING .....</b>	<b>18</b>
A. General .....	18
B. Consolidation.....	18
C. Bundling .....	19
D. Bundling Review Process .....	21
<b>VII. CERTIFICATE OF COMPETENCY .....</b>	<b>21</b>

## I. INTRODUCTION

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to provide the maximum practicable prime and subcontract opportunities to small businesses in support of the agency's mission and operational requirements. This policy ensures compliance with the law, support of Federal economic and business development initiatives, promotion of equity in procurement practices, achievement of agency small business contracting goals, and fosters an innovative and competitive supplier base.

## 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). The purpose of the NRC Small Business Program is to carry out the activities listed in Section 15(k) of the Small Business Act, as amended and to maximize the agency's use of the Federal portfolio of small business programs when acquiring products and/or services.
2. The Federal portfolio of small business programs includes the 8(a) Business Development and small businesses owned by the disadvantaged, women, veterans, service-disabled veterans, and companies located in historically underutilized business zones (HUBZones).
3. Small businesses play an important role in supporting NRC operations and support of the Federal portfolio of small business programs is essential to maintaining an innovative and competitive supplier base.
4. The three main activities of the Small Business Program are ensuring compliance with small business laws, providing technical assistance to internal stakeholders, and participating in outreach activities with external stakeholders.
5. The Small Business Program formulates policies and practices 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."
6. The Small Business Program supports economic and business development initiatives for small businesses.
7. The Small Business Program provides technical assistance through the following actions:
  - (a) Provides advice on acquisition strategies and support with market research to identify marketplace capabilities, explore innovative products and procurement practices, consider streamlined acquisition vehicles, and select cost-effective solutions for products and/or services.
  - (b) Facilitates small business set-asides.
  - (c) 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.
  - (d) Establishes thresholds at which small business reviews of acquisitions strategies will be conducted.

- (e) Mitigates the impact of justified contract consolidation and bundling.
  - (f) Monitors small business goal performance.
  - (g) Assists small businesses obtain payments, late payment interest penalties, or information on contractual payment provisions.
8. The Small Business Program educates the business community on how to conduct business with the agency.
  9. The Small Business Program participates in small business-related outreach events.

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

### **1. Small Business Definition**

A business that is organized for profit; has a place of business in the United States (U.S.); operates primarily within the U.S. or makes a significant contribution to the economy through payment of taxes or use of American products, materials, or labor; independently owned and operated; not dominant in its field of operation; and meets number of employees or average annual receipts size eligibility criteria listed in the U.S. Small Business Administration (SBA's) [Table of Small Business Size Standards](#) (13 CFR 121.101).

### **2. 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, as amended, from which it is derived, is an economic and business development program designed to help small disadvantaged businesses (SDBs) compete in the American economy by fostering entrepreneurship, providing training, and gaining access to the Federal procurement marketplace (13 CFR 124).
- (ii) A business applicant may be accepted into the program and certified as 8(a) if it is determined to be both [socially](#) and [economically disadvantaged](#) (13 CFR 124.103 and 13 CFR 124.104). Although the 8(a) Program was originally established for the benefit of disadvantaged individuals, the program has expanded to include four group-owned SDBs: Alaska Native Corporations, Community Development Corporations, Indian tribes, and Native Hawaiian Organizations (15 U.S.C. 637 and Community Economic Development Act of 1981).
- (iii) 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 Federal Acquisition Regulation (FAR) 19.8).

- (iv) Set-asides and sole source contracts to 8(a) certified businesses are permitted through directly contracting with SBA, the agency charged with administering the program, which then subcontracts with certified businesses. However, the NRC has been delegated authority from SBA to enter into contracts and negotiate directly with 8(a) certified businesses under the NRC's [Partnership Agreement](#) with SBA. Nevertheless, 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.

(b) Women-Owned Small Business Program

The Women-Owned Small Business (WOSB) Program authorizes set-asides among WOSBs or economically disadvantaged women-owned small businesses in industries in which women are underrepresented (see list [here](#)). To qualify as a WOSB, must be at least 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens. To qualify as economically disadvantaged, the business owner must meet net worth, income, and asset thresholds list in 13 CFR 127.203. Sole source awards are permitted when only one WOSB is determined capable and the contract does not exceed the thresholds for services and manufacturing identified in FAR 19.1506.

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

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. The purpose of the SDVOSB Program is to provide procuring agencies with the authority to set-aside acquisitions and issue sole source awards at or below the threshold listed in FAR 19.14 when only one SDVOSB is deemed capable.

(d) HUBZone Program

The program is designed to promote development and employment growth in economically distressed areas by permitting set-asides and sole source contract awards (sole source awards permitted when only one HUBZone certified business is deemed capable under the thresholds cited in FAR 19.1306). To qualify as a HUBZone, a small business must be principally located in an SBA designated HUBZone area and employ a certain percentage of its employees that also reside in a HUBZone (13 CFR 126.200).

### **C. Parity Among Small Business Programs**

#### Small Business Parity

1. There is parity among the Federal portfolio of Small Business Program categories, which includes 8(a) certified small businesses, woman-owned small businesses, service-disabled veteran-owned small businesses, small businesses, and small businesses located in HUBZones. No single Small Business Program category has preference over another program (see FAR 19.203(a)).
2. NRC acquisition staff (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.

### **D. Acquisition Planning and Market Research Support**

1. The Small Business Program provides acquisition planning and market research support to agency acquisition staff. The Small Business Program has designed and implemented a collaborative process to effectively identify small business marketplace capabilities, explore innovative procurement practices, consider streamlined acquisition strategies and category management principles, and consider cost-effective solutions for products and/or services.
2. Market research activities include evaluating the capabilities of companies during daily small business counseling sessions, targeting of specific capabilities through vetting sessions, hosting capability presentations and product demos, searching relevant Federal databases and catalogs, evaluating capabilities at outreach events, assisting in the design and drafting of Sources Sought Notices and Requests for Information, consulting with Federal small business offices, and working with the agency's assigned SBA Procurement Center Representative to survey the Federal portfolio of small business programs.

### **E. Activity Conversion**

1. In accordance with Section 15(k)(11) of the Small Business Act, as amended, the Director, Office of Small Business and Civil Rights (SBCR) must have an opportunity to review and advise the agency on any decision to convert an activity performed by a small business contractor to an activity performed by a Federal employee. When the Director, Acquisition Management Division (AMD), Office of Administration (ADM) (hereafter "AMD") proposes such a conversion, the Director of AMD shall notify the Director of SBCR by email to [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@nrc.gov). The email must state that the agency seeks to initiate the conversion, contain a brief synopsis that outlines the decision to support the conversion, and provide a point of contact.

2. Example of an activity conversion: If the NRC has a contract in place where a small business is providing support services and the NRC decides to move that work to an agency employee, the change will be considered a conversion. The Director of the Small Business Program role would be that of an advisory role to mitigate the impact on the small business and does not have a binding impact on the agency's decision.

#### **F. Purchase Card Summary Review**

The Small Business Program is required to review agency purchase card summary data on an annual basis for purchases greater than the micro-purchase threshold and less than the Simplified Acquisition Threshold (SAT) to ensure purchases are made in compliance with 41 U.S.C. 1902. The Small Business Program will review the summary year-end purchase card report provided by the Acquisition Management Division (AMD) and inform AMD of any data anomalies identified.

#### **G. Small Business Goals**

1. Contracting with small businesses is 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 certain Small Business Program categories (small businesses, SDBs, WOSBs, SDVOSBs, and HUBZones).
2. The SBA is responsible for the management and oversight of the small business goaling process across the Federal Government. SBA negotiates the NRC's prime and subcontract goals on an annual basis, which are based upon an analysis of past goal achievements. Yearly goal negotiations are conducted to ensure that small businesses continually have the maximum practicable prime and subcontract opportunities with the agency.
3. Section 15(g) of the Small Business Act, as amended, lists the statutorily mandated minimum small business prime and subcontract goals. However, current applicable NRC small business prime and subcontract goals can be found [here](#).

### **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 under varying authorities. 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.

## **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, use of small businesses to the maximum extent practicable is encouraged as 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 through 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 Above the Micro-Purchase Threshold But Below the Simplified Acquisition Threshold (Mandatory Assessment)
  - (a) Each acquisition of supplies or services that has an anticipated dollar value above the micro-purchase threshold, but not over the simplified acquisition threshold (see FAR 13.003(b)(1)) is automatically 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 (FAR 19.502-2(a)).
  - (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 U.S. 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 SBA'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 U.S. (13 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, excluding 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, as amended, 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 (13 CFR 121.1202).
- (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 [here](#).
- (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 (13 CFR 121.1203).

- (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 under limited circumstances (see 13 CFR 124.504(d)).

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

Advance Procurement Plans (APP) for new acquisition actions valued at or above \$25,000 must be available to the Small Business Program for review. 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 AMD, and other NRC staff based upon the APPs received. This effort should result in the selection of requirements to be set aside for small business competition before the requisition 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 acquisition staff upon review of the APP to gather 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 products and/or services to encourage purchases with small businesses (Office of Federal Procurement and Policy Memorandum, "Increasing Opportunities for Small Businesses in Purchase Card Micro-Purchases"). Staff also can request review of these acquisitions from the Small Business Program by electronically sending the documents to [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@nrc.gov).

**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 [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@nrc.gov).

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 [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@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 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. Any prime contractor awarded a contract above the simplified acquisition threshold must ensure that small business, veteran-owned small business, SDVOSBs, HUBZone small business, SDBs, and WOSBs will have the maximum practicable opportunity to participate in contract performance consistent with prime contractor's efficient performance (FAR 19.702(a)).
2. An other-than-small business that receives a Federal contract or subcontract over the threshold identified in FAR 19.702(a)(1) must submit a subcontracting plan in accordance with applicable statutes, regulations, Executive Orders, and Federal policy (see FAR 19.702 and 19.704).
3. 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 and gain past performance experience, which the prime contract can provide a rating for future competitions where the subcontractor was a first-tier subcontractor (National Defense Authorization Act of 2021, Section 868 "Past Performance Ratings of Certain Small Business Concerns").

### B. Requirements

1. Each solicitation 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 and the criteria for an acceptable subcontracting plan are set forth in FAR 19.704.
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 have it considered in past performance evaluations (see FAR 19.702(c) and 19.705-7).

### **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. 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 [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@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.
3. The Small Business Program may assist in the review subcontract reports, conduct site visits to contractor facilities (if necessary), and monitor progress toward goal achievement. If the prime contractor is failing to meet one or more subcontracting goals or not following the plan's requirements, 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 (SDBs) 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 support SBA policies and programs. The assigned SBA Procurement Center Representative is required to comply with the contracting agency's directives governing 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 Reviews**

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 SBA Procurement Center Representative will 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 19.502-8).
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 19.502-8).
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

Consolidation and bundling while defined differently, are alike in that each entail combining multiple procurements into a single solicitation, which can reduce costs or improve performance, but can also diminish competition by effectively excluding small businesses that can perform only a portion of the proposed requirements. As a result, Congress has enacted several measures that restrict consolidation and bundling because of concerns about their effects on small businesses. As a result of these measures, procuring activities are required to comply with certain procedures before proceeding with an acquisition that involves consolidated or bundled requirements.

### B. Consolidation

Consolidation is the action of combining two or more individual procurements into a single procurement that may make it difficult for small businesses to compete for the procurement. While related to bundling, consolidation is slightly different from that procurement integration because the definition is much broader. Consolidation encompasses requirements that were not only previously performed by small businesses, but also includes contracts previously performed by other-than-small businesses.

#### 1. Consolidation Analysis

The concern with consolidation is that it will exclude small business contractors from Federal contracting opportunities because it will both reduce the number of awardees and require the awardee to have greater qualifications than small businesses may otherwise be able to provide. To address this issue, before a procurement exceeding \$2 million may be consolidated, the contracting agency must—

- (a) Conduct market research to evaluate the impact on small businesses,
- (b) Identify any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements,
- (c) Determine that consolidation is “necessary and justified,”
- (d) Identify any negative impact of the acquisition strategy on contracting with small businesses, and
- (e) Ensure steps will be taken to include small businesses in the acquisition strategy.

#### 2. Consolidation Determination

Consolidation may be determined both necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of alternative contracting approaches (see FAR 7.107-2(b)). Benefits may include cost savings or

price reduction, regardless of whether such benefits are quantifiable. Such benefits include quality improvements that save time or enhance performance or efficiencies, reduction in acquisition lifecycle times, better terms and conditions, or any other benefit (see FAR 7.107-2(c)). If benefits are quantifiable then a 10 percent savings is required for acquisitions with an award value less than \$94 million and 5 percent if the award value is more than \$94 million. Administrative cost savings alone are considered to be substantial if they are at least 10 percent. If a determination is made that consolidation is necessary and justified, the contracting officer shall include it in the acquisition strategy documentation and provide it to SBA upon request.

### 3. Consolidation Review Process

The consolidation determination shall be sent to the Small Business Program at [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@nrc.gov) for review and concurrence. The Director of the Small Business Program 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 from receipt to complete the review.

### 4. Consolidation Posting Requirement

A notice is required to be posted communicating that the agency has determined a consolidation of contract requirements is necessary and justified within 7 days after making the determination and the solicitation may not be publicized prior to 7 days after publication of the notice of the agency determination. The determination that consolidation is necessary and justified must be included with the publication of the solicitation (FAR 7.107-2).

## C. Bundling

Bundling occurs when an agency decides to consolidate two or more requirements 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 small business set-asides.

### 1. Bundling Analysis

When consolidating two or more existing contracts already being performed, or could have been performed, by small businesses into one contract that exceeds the threshold identified in FAR 7.107-4(a)(1)(iii), the contracting officer shall complete the following activities at least 30 days prior to the release of the solicitation:

- (a) 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)).
- (b) 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)).
- (c) 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)).
- (d) Notify all incumbents 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)).

## 2. Bundling Justification Requirements

- (a) 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:
  - (i) Cost savings or price reduction,
  - (ii) Quality improvements that will save time, improve or enhance performance, improve or enhance efficiency, or reduce acquisition cycle times, and
  - (iii) Better terms and conditions.
- (b) The contracting officer must quantify the benefits and explain how they will measurably benefit the NRC. Acquisitions with a total estimated contract value less than the amount listed in FAR 7.107(b)(1) would require a 10 percent cost savings, and with a total estimated contract value 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.
- (c) 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, as well as the rationale for not choosing those approaches (see FAR 7.107).

#### **D. Bundling Review Process**

The bundling justification shall be sent to the Director of the Small Business Program at [smallbusinessreview@nrc.gov](mailto:smallbusinessreview@nrc.gov) for review and concurrence. The Small Business Program 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 after receipt of the justification.

### **VII. CERTIFICATE OF COMPETENCY**

Before a contract may be awarded, the contracting officer must determine that the business is responsible to perform the contract's tasks and deliverables. If the contracting officer determines that an apparent successful small business offeror lacks one or more certain elements of responsibility (e.g., is unable to fulfill the requirements of a specific Government procurement because it lacks capability, competency, capacity, credit, integrity, perseverance, tenacity, or limitations on subcontracting), the contracting officer is required to refer the matter in writing to the SBA for review and issuance of a Certificate of Competency (COC). The COC Program provides a process through which a small business can appeal a contracting officer's determination that it is not responsible to perform a specific acquisition. A small business can only apply for a COC after it has been formally referred to the SBA by the contracting officer. If the SBA concludes that the business overcame the contracting officer's objections, a COC will be issued. When issued, a COC certifies that the company meets the criteria for responsibility and should receive the award. When SBA issues the COC, the contracting officer must award the contract to that small business. The decision to apply for a COC is entirely optional and if a small business declines to apply, the contracting officer moves to the next company in line for the award.