

**SUBPART 219.7—SUBCONTRACTING WITH SMALL BUSINESS, SMALL  
DISADVANTAGED BUSINESS AND WOMEN-OWNED  
SMALL BUSINESS CONCERNS**

**219.702 Statutory requirements.**

(a) Section 834 of Pub. L. 101-189, as amended, requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

(i) The test program—

(A) Will be conducted—

(1) From October 1, 1990, through September 30, 2000;

(2) In accordance with the DoD test plan, “Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans;” and

(3) By the military departments and defense agencies through specifically designated contracting activities; and

(B) Permits contractors selected for participation in the test program by the designated contracting activities to—

(1) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(2) Use the comprehensive plans when performing any DoD contract or subcontract that requires a subcontracting plan.

(ii) During the test period, comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts that require a plan;

(C) Be used by all DoD contracting officers in contracts, which require a plan, awarded the selected contractors during the test period; and

(D) Not be subject to application of liquidated damages during the period of the test program (Section 402, Pub. L. 101-574).

**219.703 Eligibility requirements for participating in the program.**

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48), are eligible to

## **Defense Federal Acquisition Regulation Supplement**

### **Part 219—Small Business Programs**

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participate in the program as a result of 10 U.S.C. 2410d and Section 9077 of Pub. L. 102-396 and similar sections in subsequent Defense appropriations acts. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal through fiscal year 1999.

(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in the provision at 252.219-7000, Small Disadvantaged Business Concern Representation (DoD Contracts).

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219-7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation as to status of—

(i) A historically black college or university or minority institution; or

(ii) A qualified nonprofit agency for the blind and other severely handicapped approved by the Committee for Purchase from the Blind and Other Severely Handicapped.

#### **219.704 Subcontracting plan requirements.**

(a)(1) The goal for use of small disadvantaged business concerns shall include subcontracts with historically black colleges and universities and minority institutions (see Subpart 226.70), in addition to subcontracts with small disadvantaged business concerns. Subcontracts with historically black colleges and universities and minority institutions do not have to be included in the small disadvantaged business goal in commercial items subcontracting plans.

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

#### **219.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

##### **219.705-2 Determining the need for a subcontracting plan.**

(d) See 215.605 for unique DoD requirements.

##### **219.705-4 Reviewing the subcontracting plan.**

(d) Challenge any subcontracting plan that does not contain positive goals and consider the extent to which an offeror plans to use competition restricted to small disadvantaged business concerns, historically black colleges and universities, or

**Part 219—Small Business Programs**

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minority institutions. A small disadvantaged business goal of less than five percent must be approved two levels above the contracting officer.

**219.706 Responsibilities of the cognizant administrative contracting officer.**

(a)(i) The contract administration office also is responsible for reviewing, evaluating, and approving master subcontracting plans.

(ii) The small business specialist supports the administrative contracting officer in evaluating a contractor's performance and compliance with its subcontracting plan.

**219.708 Solicitation provisions and contract clauses.**

(b)(1)(A) Use the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), use the clause at 252.219-7004, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(2) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), do not use the clause at FAR 52.219-16, Liquidated Damages—Small Business Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

(A) When contracting by negotiation, use the clause at 252.219-7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit under the Pilot Mentor-Protege Program (see Subpart 219.71).

(B) Use the clause at 252.219-7005 with its Alternate I when, in the judgement of the contracting officer, inclusion of an incentive is necessary to increase subcontracting opportunities for other small businesses.

(C) Determine the percentage to be negotiated and used in the clause by considering the type and extent of effort required to exceed the goal, for example—

(1) Unique outreach programs;

## **Defense Federal Acquisition Regulation Supplement**

### **Part 219—Small Business Programs**

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(2) Use of small disadvantaged businesses, historically black colleges and universities, and minority institutions in nontraditional areas;

(3) Technical assistance to qualify or assist these entities; and

(4) Proximity of subcontractors to the prime.

(D) Do not use the clauses at 252.219-7005 and FAR 52.219-10 in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

(c)(2) For negotiated acquisitions of \$10 million or more, the contracting officer may use an award fee provision instead of the incentive provision required by (c)(1)(A). When an award fee provision is used, do not use the clauses at 252.219-7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, and FAR 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns. Do not use award fee provisions in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).