



09-07

Procurement Information Circular

May 18, 2009

SMALL BUSINESS (SB) UTILIZATION SUBFACTOR

PURPOSE: To provide model clause and provision language to ensure the proper evaluation of small business utilization under competitive negotiated acquisitions.

BACKGROUND: Procurement Information Circular (PIC) 08-05 was the companion to NASA FAR Supplement (NFS) 1815.304 (c)(4)(A). It provided sample provisions to be incorporated into solicitations requiring that Small Business Utilization (SBU) be evaluated as a single subfactor under the Mission Suitability factor. The PIC provided a model clause, *Small Disadvantaged Business Participation – Contract Targets (Offeror Fill In)*, for inclusion in Section H, Special Contract Requirements, and the model provision language for inclusion in Section L, Instructions, and in Section M, Evaluation Factors for Award, to ensure compliance with the procedures set forth at FAR 19.1202 Evaluation factor or subfactor, and NFS 1815.304(c)(4)(A). Due to changes in procurement policy, small business policy, and case law, the model language has become dated and inaccurate. Consequently, the model clause and model provision and evaluation instructions have been rewritten to address numerous issues.

This PIC provides model language and instructions that are updated to:

1. Clearly indicate that although small business is not required to prepare subcontracting plans, they must indicate the amount of effort that will be performed by small business subcontractors;
2. Rename the subfactor previously identified in PIC 08-05 as “Other Information” to “Commitment to the Small Business Program”, and clarify that all Offerors are required to complete this portion;
3. Evaluate SDB under subcontracting plans only in those industries designated by the Department of Commerce as underrepresented areas by NAICs Industry Subsector;
4. Evaluate past performance on small business utilization relative to subcontracting plans under the Past Performance factor instead of under the Small Business Utilization portion of the Mission Suitability factor. Proposed language addressing past performance with regard to small business utilization is also attached to this PIC; and
5. Eliminate the price evaluation adjustment for Small Disadvantaged Business (SDB) concerns.

GUIDANCE: Contracting officers should use the enclosed model clause, *Small Disadvantaged Business Participation – Contract Targets (Offeror Fill In)*, for inclusion in Section H, Special Contract Requirements, and the model provision language for inclusion in Section L, Instructions, and in Section M, Evaluation Factors for Award, to ensure compliance with the procedures set forth at FAR 19.1202, Evaluation factor or subfactor, and NFS 1815.304(c)(4)(A). The model language is recommended for use in contracting by negotiations when –
- subcontract plans are required with submission of initial offers,

- contracts are expected to exceed \$550,000 (\$1,000,000 for construction of any public facility),
- subcontracting possibilities exist,
- contracts are required to include the clause at 52.219-8, Utilization of Small Business Concerns, and
- the acquisition is not set aside or will be accomplished under the 8(a) program.

The model language may be modified to meet the specific requirements of the solicitation. For example, solicitations for procurement of goods or services on an indefinite-delivery, indefinite-quantity basis may substitute "IDIQ MAXIMUM ORDERING VALUE" FOR "TOTAL CONTRACT VALUE" when defining the basis on which subcontracting goals are to be proposed.

Contracting officers should work with their center small business specialist when developing their solicitation that will include the small business utilization factor.

CANCELLATION: This PIC supersedes PIC 08-05.

EFFECTIVE DATE: This PIC is effective as dated and will remain in effect until canceled or superseded.

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Enclosure

DISTRIBUTION:
PIC List

Section H

H.XX SMALL DISADVANTAGED BUSINESS PARTICIPATION – CONTRACT TARGETS (OFFEROR FILL IN)

(This clause applies to all Offerors including small disadvantaged businesses (SDBs).)

(a) FAR 19.1202-4(a) requires that SDB subcontracting targets be incorporated in the Contract. Targets for this contract are as follows:

*NAICS Industry

| <u>Subsectors</u> | <u>Dollar Target</u> | <u>Percent of Contract Value</u> |
|--|----------------------|----------------------------------|
| (TO BE PROPOSED BY ALL OFFERORS TO INCLUDE SDBs) | | |

Total

*North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce as being underrepresented in accordance with FAR 19.201(b)

(b) FAR 19.1202-4(b) requires that SDB concerns that are specifically identified by the Offeror be listed in the contract when the identification of such subcontractors was evaluated as part of the subfactor on Small Business Utilization. SDB concerns (subcontractors) specifically identified by the Offeror are as follows:

Name of Concern(s): (TO BE PROPOSED BY OFFEROR)

The Contractor shall notify the Contracting Officer of any substitutions of the firms listed if the replacement contractor is not an SDB concern.

(iv) Offerors are encouraged to propose goals that are equivalent to or greater than those recommended by the Contracting Officer. However, Offerors must perform an independent assessment of the small business subcontracting opportunities.

(v) The Plan submitted with the proposal shall be incorporated in Section J as Attachment J-X in the resulting contract. The requirements in the Plan must flow down to first tier large business subcontracts expected to exceed \$550,000 or \$1,000,000 for construction of a public facility. Although these first tier large business subcontractors are encouraged to meet or exceed the stated goals, it is recognized that the subcontracting opportunities available to these subcontractors may differ from those suggested in the solicitation based upon the nature of their respective performance requirements.

(vi) Offerors are advised that a proposal will not be rejected solely because the submitted Plan does not meet the NASA recommended goals that are expressed in paragraph (a) (2) above in terms of percent of TOTAL CONTRACT VALUE (basic and all options combined). NASA will consider the amount of work being retained for performance by the prime contractor in-house when determining whether a subcontracting plan is acceptable. Offerors shall discuss the rationale for any goal proposed that is less than the Contracting Officer's recommended goal in any category. In addition, the Offeror shall describe the efforts made to establish a goal for that category and what ongoing efforts, if any, the Offeror plans during performance to increase participation in that category.

(vii) In addition to submitting a Small Business Subcontracting Plan in accordance with Section I, FAR clause 52.219-9, Alternate II, Offerors shall complete Exhibit X, SMALL BUSINESS SUBCONTRACTING PLAN GOALS, which provides a breakdown of the Offeror's proposed goals, by small business category, expressed in terms of both a percent of TOTAL CONTRACT VALUE and a percent of TOTAL PLANNED SUBCONTRACTS. Offerors shall modify the exhibit to show the proposed subcontracting goals for the basic contract requirement and each option separately.

[Contracting officers may tailor the references in this paragraph to conform to the method of exhibits used in the solicitation.]

Example of Subcontracting Goals, expressed in both contract value and subcontract value, for a contract proposed at \$100M with estimated subcontracts of \$50M:

| Business Category | Column A Goal as Percent of Contract Value | Column B Dollar Value to be subcontracted per Category | Column C Goal as Percent of Subcontracting Value |
|--|---|---|---|
| Small Business Concerns | 25 percent | \$25,000,000 | 50 percent |
| Large Business Concerns | n/a | \$25,000,000 | 50 percent |
| Total Dollars to be Subcontracted | n/a | \$50,000,000 | 100 percent |
| <i>The following small business subcategories do not necessarily add up to the percentage and dollar amount in the "Small Business Concerns" category above, since some small businesses do not fall into any of the subcategories below, while others will fall into more than one subcategory below.</i> | | | |
| Subcategories of Small Business Concerns | | | |
| Women Owned Small Business Concerns | 9 percent | \$9,000,000 | 18 percent |
| Small Disadvantaged Business Concerns | 5.5 percent | \$5,500,000 | 11 percent |

| | | | |
|--|-------------|-------------|-----------|
| Veteran Owned Small Business Concerns | 2.5 percent | \$2,500,000 | 5 percent |
| Service-Disabled Veteran-Owned Small Business Concerns | 1.5 percent | \$1,500,000 | 3 percent |
| HUBZone Small Business Concerns | 1.5 percent | \$1,500,000 | 3 percent |
| Historically Black Colleges and Universities | 1.5 percent | \$1,500,000 | 3 percent |

It is recommended that Offerors first complete Column B by entering the dollar amount the Offeror proposes to subcontract to each business category and subcategory.

To complete Column A, divide the dollar amount in Column B by the **total offered price of the proposal** (that is, total contract value). In the example above, Column A for Veteran Owned Business Concerns = \$2,500,000 divided by \$100,000,000, or 2.5%.

To complete column C, divide the corresponding amount in Column B by the amount in the "Total Dollars to be Subcontracted" cell in Column B. In the example above, Column C for Women-Owned Small Businesses = \$9,000,000 divided by \$50,000,000, or 18%.

Note: the "Total Dollars to be Subcontracted" amount in Column C will always be that category divided by itself (100% if any dollars are subcontracted).

[Paragraph (2) of this section on "Commitment to the Small Business Program" requirements may be tailored to better fit the requirements of the procurement.]

(b) Commitment to the Small Business Program

(1) All Offerors shall briefly describe work that will be performed by small businesses. Proposals should also identify any work to be subcontracted that is considered "high technology." High Technology is defined as research and development efforts that are within or advance the state-of-the-art in technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists. ***[Contracting Officer may modify the above definition of "high technology.]***

(2) If the subcontractor(s) is known, Offerors must connect the work to the subcontractor and specify the extent of commitment to use the subcontractor (s) (enforceable vs. non-enforceable commitments). (Small business Offerors shall provide this information to the extent subcontracting opportunities exist in their approach to performing the requirement.)

(3) All Offerors shall provide information demonstrating the extent of commitment to utilize small business concerns and to support their development. Information provided should include a brief description of established or planned procedures and organizational structure for Small Business outreach, assistance, participation in the Mentor Protégé program, counseling, market research and Small Business identification, and relevant purchasing procedures. (For Large Business Offerors, this information should conform to applicable portions of the submitted Small Business Subcontracting Plan. Small Business Offerors shall provide this information to the extent subcontracting opportunities exist in their approach to performing the requirement.)

(c) Small Disadvantage Business (SDB) Participation:

Small Disadvantaged Business Participation – Contract Targets:

(1) After completing an independent assessment of the opportunities available for subcontracting with small disadvantaged firms in under-represented areas, Offerors shall propose a target for SDB participation by completing the Section H clause at H.XX, Small Disadvantaged Business Participation – Contract Targets, to include identification of SDB subcontractors and associated NAICS Industry Subsectors. The target for SDB participation in clause H.XX shall be expressed as a percent of TOTAL CONTRACT VALUE (basic and all options combined). The targets shall only include subcontracts with SDB concerns in those industries designated by the Department of Commerce as under-represented areas by NAICS Industry Subsector. The General Services Administration has posted this Department of Commerce determination at <http://www.arnet.gov/References/sdbadjustments.htm>. If the Offeror is an SDB, it shall provide with its offer a target for the work that it intends to perform. Like other Offerors, an SDB prime should provide a target for the work intended to be performed by a first tier

subcontractor in the authorized subsectors.

(2) **Guidance for completing the tables in Section H.XX (a) and (c):** The Department of Commerce determination uses Standard Industry Codes (SIC) instead of NAICS. Offerors may use the following steps to convert SIC to NAICS, and to complete Section H.XX.

- a. Using the website below, identify the applicable 6-digit 2007 NAICS Code, **and** the corresponding 6-digit 2002 NAICS Code, for the work that is to be subcontracted to a small disadvantaged business. The 2007 and 2002 Codes may or may not be the same as one another.

<http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2007>

- b. Using the website listed below, convert the corresponding **2002** NAICS code to the corresponding 1987 Standard Industry Code (SIC).

<http://www.census.gov/epcd/naics02/N02TOS87.HTM>

- c. Using the website listed below, determine if the corresponding 1987 SIC is under-represented. If the "SIC Major Group" (e.g., the first two digits of the corresponding 1987 SIC) is listed on the website below, that SIC Major Group, and the corresponding 2002/2007 NAICS codes, are considered to be under-represented.

<http://www.arnet.gov/References/sdbadjustments.htm>

- d. List the applicable under-represented **2007** NAICS code(s) in the "NAICS Industry Subsectors" column in the applicable table in Section H.XX, along with the data required by the remaining columns in the table.

(End of provision)

Section M

"EVALUATION FACTORS FOR AWARD" LANGUAGE

SMALL BUSINESS UTILIZATION SUBFACTOR

The evaluation of Small Business Subcontracting and Commitment to the Small Business Program applies to all Offerors, except that Small Businesses are not required to submit a Small Business Subcontracting Plan. .

The evaluation of SDB participation applies to all Offerors.

(a) Small Business Subcontracting

(1) The Small Business Subcontracting Plan will be evaluated in terms of the Offeror's proposed subcontracting goals (overall subcontracting goals and individual subcontracting goals by small business category) in comparison to the Contracting Officers assessment of the appropriate subcontracting goals for this procurement. The Offeror's Small Business Subcontracting Plan will also be evaluated in terms

of meeting the requirements of FAR 19.704, Subcontracting Plan Requirements. The evaluation of the Small Business Subcontracting Plan will be on the basis of total contract value.

(2) Small businesses are not required to submit subcontracting plans. NASA will only evaluate the amount of work proposed to be performed by the small business prime and any small business at the first tier subcontract level. The proposed amount of work to be done by the prime small business and first tier small business subcontractors will be evaluated against the Contracting Officer's assessment of the overall subcontracting goal for this procurement. Individual subcontracting goals by small business categories will not be evaluated for small business primes and their first tier subcontractors.

(b) Commitment to Small Businesses

(1) NASA will evaluate the extent to which any work performed by a small business subcontractor(s) is identified as "high technology". NASA also will evaluate the extent of commitment to use the subcontractor(s) (enforceable vs. non-enforceable commitments).

(2) NASA will evaluate the extent to which the identity of the small business subcontractor is specified in the proposal as well as the extent of the commitment to use small businesses. (For small business Offerors, NASA will evaluate this only if subcontracting opportunities exist.)

(3) NASA will evaluate the Offeror's established or planned procedures and organizational structure for small business outreach, assistance, participation in the Mentor Protégé program, counseling, market research and small business identification, and relevant purchasing procedures. (For large businesses Offerors, this information should conform to its submitted Small Business Subcontracting Plan. For small business Offerors, NASA will evaluate this only if subcontracting opportunities exist.)

(c) SDB Participation

(1) The Government will evaluate the reasonableness of the proposed SDB participation along with supporting rationale against total contract value. Specific identification of SDB contractors and associated work will be evaluated for feasibility.

(End of provision)