

Contract Formation

Activity 12: Socioeconomic Programs and Set-Asides

Determining the applicability of small business requirements and socioeconomic programs to a given acquisition and procedures for fulfilling such requirements.

Related Flow Charts: [Flow Chart 12](#)

Related Courses: [FAC 031: Small Business Programs](#)

Related Tools: [System for Award Management \(SAM\)](#), [Acquisition Gateway Hallways](#)

Part A: Acquisitions Not Exceeding the Simplified Acquisition Threshold

Tasks	FAR Reference(s)	Additional Information
1. Determine if offers that are competitive in terms of price, quality, and delivery can be obtained from at least two responsible small business concerns.	FAR 19.502-2(a) Total small business set-asides.	Each acquisition with an estimated price exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold must be set aside for small business unless: <ul style="list-style-type: none">• The requirement is set aside under a more restrictive set-aside program; or• The contracting officer determines that 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.
1(a)(i). If at least two such offers cannot be obtained, document the basis for an unrestricted acquisition.	FAR 19.502-2(a) Total small business set-asides. FAR 19.502-2(c) Total small business set-asides.	If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer is to include in the contract file the reason for this unrestricted purchase. A small business concern proposing to furnish a product that it did not manufacture itself must: <ul style="list-style-type: none">• Furnish the product of a small business manufacturer; or• Obtain a waiver to the nonmanufacturer rule.

Tasks	FAR Reference(s)	Additional Information
1(a)(ii). Proceed with an unrestricted acquisition.	FAR 19.502-2(a) Total small business set-asides.	
1b. If at least two such offers can be obtained, determine whether to make a further restrictive set-aside.	FAR 19.202-2 Locating small business sources.	<p>Determine whether small businesses in one or more of the following classifications are currently providing the required supplies or services:</p> <ul style="list-style-type: none"> • Small business without further restriction; • Small disadvantaged business (SDB); • Historically Underutilized Business Zones program (HUBZone) small business; • Veteran-owned small business (VOSB); • Service-disabled veteran-owned small business (SDVOSB); • Woman-Owned Small Business (WOSB) program; or • Economically disadvantaged women-owned small business (EDWOSB).
2a. Estimate the number of eligible firms in each of the various small business classifications that are available to provide the required supply or service.	<p>FAR 19.1305 HUBZone set-aside procedures.</p> <p>FAR 19.1405 Service-disabled veteran-owned small business set-aside procedures.</p> <p>FAR 19.1505 Set-aside procedures [Woman-Owned Small Business (WOSB) program].</p>	Determine if two or more concerns will submit offers and if the award will be made at a fair and reasonable price.

Tasks	FAR Reference(s)	Additional Information
2b. Consider information collected during market research.	General practice.	<p>In making the determination, consider information collected during market research, including information from the following:</p> <ul style="list-style-type: none"> • Any sources sought synopsis; • Small Business Administration (SBA) PRO-Net database; • Agency Office of Small and Disadvantaged Business Utilization; • Agency small business specialist; • SBA Procurement Center representative; • SBA Breakout Procurement Center representative; or • SBA small business technical advisor.
2. After receipt of quotes or offers, determine whether to modify or withdraw a set-aside.	FAR 19.506 Withdrawing or modifying small business set-asides.	<p>A set-aside may be modified or withdrawn when:</p> <ul style="list-style-type: none"> • No offer is received under the set-aside; or • The contracting officer considers that award based on the offers received would be detrimental to the public interest (e.g., the offer is not at a fair market price or competitive in terms of quality and delivery). <p>If the agency small business specialist does not agree with a withdrawal or modification, the case must be submitted to the SBA representative for review.</p> <p>Prepare a written statement supporting any withdrawal or modification of the small business set-aside and include it in the contract file.</p>
3. Evaluate quotes/offers.	FAR 13.106-2 Evaluation of quotations or offers.	<p>The contacting officer must evaluate quotations or offers—</p> <ul style="list-style-type: none"> • In an impartial manner; and • Inclusive of transportation charges from the shipping point of the supplier to the delivery destination. <p>Quotations or offers must be evaluated on the basis established in the solicitation.</p> <p>All quotations or offers must be considered.</p>

Tasks	FAR Reference(s)	Additional Information
4. Determine if the apparent successful offeror lacks certain elements of responsibility.	FAR 19.602-1 Referral.	Elements of responsibility include, but are not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting. See Activity 22, Responsibility Determination.
4a. If the apparent successful offeror is responsible, make the award.	FAR 19.502-2 Total small business set-asides.	If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm.
4(b)(i). If the apparent successful offeror lacks certain elements of responsibility, withhold contract award.	FAR 19.602-1(a)(1) Referral.	Upon determining and documenting that an apparent successful small business offeror lacks certain elements of responsibility (including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting, but for sureties see FAR 28.101-3(f) and FAR 28.203(c)), the contracting officer must withhold contract award.
4(b)(ii). Refer the matter to the cognizant SBA Government Contracting Area Office.	FAR 19.602-1(a)(2) Referral.	Referral is not necessary if the small business concern: <ul style="list-style-type: none"> • Is determined to be unqualified and ineligible because it does not meet the standard in FAR 9.104-1(g); provided, that the determination is approved by the chief of the contracting office; or • Is suspended or debarred.

Tasks	FAR Reference(s)	Additional Information
<p>4(b)(iii). Await the SBA determination on the apparent successful offeror's Certificate of Competency (COC), but make every effort to reach a resolution before the SBA takes final action on the COC.</p>	<p>FAR 19.602-3 Resolving differences between the agency and the Small Business Administration.</p>	<p>If agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer is to request that the Area Office suspend action and refer the matter to SBA Headquarters for review. The SBA Area Office will honor the request for a review if the contracting officer agrees to withhold award until the review process is concluded. Without an agreement to withhold award, the SBA Area Office will issue the COC in accordance with applicable SBA regulations.</p> <p>SBA Headquarters will furnish written notice to the procuring agency's Director, Office of Small and Disadvantaged Business Utilization (OSDBU) or other designated official (with a copy to the contracting officer) that the case file has been received and that an appeal decision may be requested by an authorized official.</p> <p>The contracting officer is to proceed with the acquisition and award the contract to another appropriately selected and responsible offeror if the SBA has not issued a COC within 15 business days (or a longer period of time agreed to with the SBA) after receiving the referral.</p>
<p>4(b)(iv). If new information causes the contracting officer to determine that the concern is responsible, notify the SBA and withdraw the referral.</p>	<p>FAR 19.602-4 Awarding the contract [certificates of competency and determinations of responsibility].</p>	<p>If new information causes the contracting officer to determine that the concern referred to the SBA is actually responsible to perform the contract, and award has not already been made, the contracting officer must reverse the determination of nonresponsibility, notify the SBA of this action, withdraw the referral, and proceed to award the contract.</p>
<p>4(b)(v). After receiving notification of the SBA's COC issuance, determine whether to appeal the decision.</p>	<p>FAR 19.602-2 Issuing or denying a Certificate of Competency (COC).</p> <p>FAR 19.602-3 Resolving differences between the agency and the Small Business Administration.</p> <p>FAR 19.602-4 Awarding the contract [certificates of competency and determinations].</p>	<p>The contracting officer must award the contract to the concern in question if the SBA issues a COC after receiving the referral. An SBA-certified concern is not required to meet any other requirements of responsibility. SBA COC's are conclusive with respect to all elements of responsibility of prospective small business contractors.</p> <p>If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a time period agreed upon by both agencies) that it intends to appeal the issuance of the COC.</p>

Tasks	FAR Reference(s)	Additional Information
4(b)(vi). File the appeal and notify SBA Headquarters through the appropriate channel within 10 business days.	FAR 19.602-3 Resolving differences between the agency and the Small Business Administration.	If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its procuring agency's Director, OSDDBU, or other designated official, within 10 business days (or a time period agreed upon by both parties) that it intends to appeal the issuance of the COC.
5. Document the contract file.	FAR 4.8 Contents of contract files.	The contract file must contain: <ul style="list-style-type: none"> Contracting officer's determination of the contractor's responsibility Small Business Administration COC.
6. Publicize the proposed contract action.	FAR 5.201 General [proposed contract actions].	The contracting officer must transmit a notice to the GPE for each contract action over \$25,000.
7. Report the award to the Federal Procurement Data System-Next Generation (FPDS-NG).	FAR 4.603 Policy [contract reporting].	Contracts whose estimated value is \$3,000 or more or that may be \$3,000 or more must be reported in FPDS-NG. Every modification to that contract, regardless of dollar value must be reported to FPDS-NG.

Part B: Acquisitions Exceeding the Simplified Acquisition Threshold

Tasks	FAR Reference(s)	Additional Information
1. Determine if there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and award will be made at fair market prices.	FAR 19.502-2(b) Total small business set-asides. FAR 19.502-2(c) Total small business set-asides.	Set aside for small business participation any acquisition with an estimated price exceeding the simplified acquisition threshold when there is a reasonable expectation that: <ul style="list-style-type: none"> Offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns; and Award will be made at fair market prices. A small business concern proposing to furnish a product that it did not manufacture itself must: <ul style="list-style-type: none"> Furnish the product of a small business manufacturer; or Obtain a waiver to the nonmanufacturer rule.

Tasks	FAR Reference(s)	Additional Information
2. If offers with fair market prices cannot be obtained from at least two responsible small business concerns, determine whether the acquisition can be broken into discrete portions.	FAR 19.502-3(a)(2) Partial set-asides.	Determine that requirement is severable into two or more economic production runs or reasonable lots.
3. If the acquisition can be broken into discrete portions, determine if one or more small business concerns can satisfy the set-aside portion.	FAR 19.502-3(a)(3) Partial set-asides.	Determine that one or more small business concerns have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price.
4. If one or more small business concerns can satisfy the set-aside portion, divide the acquisition into set-aside and non-set-aside portions.	FAR 19.502-3(b) Partial set-asides.	<p>When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement must be divided into a set-aside portion and a non-set-aside portion, each of which must:</p> <ul style="list-style-type: none"> • Be an economic production run or reasonable lot; • Have terms and a delivery schedule comparable to the other. <p>When practicable, the set-aside portion should make maximum use of small business capacity.</p>
5. Award the non-set-aside portion using normal contracting procedures.	FAR 19.502-3(c)(1) Partial set-asides.	

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<p>6. After all awards have been made on the non-set-aside portion, negotiate with eligible concerns on the set-aside portion and make the award.</p>	<p>FAR 19.502-3(c)(2) Partial set-asides.</p>	<p>Negotiations are to be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations are to be conducted with small business concerns in the order of priority as indicated in the solicitation.</p> <p>The set-aside portion is to be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion must not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.</p> <p>If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part of the acquisition is to have first priority with respect to negotiations for the set-aside.</p>

Part C: 8(a) Programs

Tasks	FAR Reference(s)	Additional Information
<p>1. Review the determination to offer the acquisition to the Small Business Administration 8(a) Business Development Program.</p>	<p>FAR 19.803 Selecting acquisitions for the 8(a) program. FAR 19.804-1 Agency evaluations [evaluation, offering, and acceptance].</p>	<p>In reviewing the extent to which a requirement should be offered in support of the 8(a) Program, consider:</p> <ul style="list-style-type: none"> • Current and future plans to acquire the specific items or work that 8(a) contractors are seeking to provide, identified in terms of: <ul style="list-style-type: none"> ○ Quantities required or the number of construction projects planned; and ○ Performance or delivery requirements, including required monthly production rates, when applicable; • Current and future plans to acquire items or work similar

Tasks	FAR Reference(s)	Additional Information
		<p>in nature and complexity to that specified in the business plan;</p> <ul style="list-style-type: none"> • Problems encountered in previous acquisitions of the items or work from the 8(a) contractors and/or other contractors; • The impact of any delay in delivery; • Whether the items or work have previously been acquired using small business set-asides; • Capability statements from known 8(a) contractors and information from any related meetings; and • Any other pertinent information about known 8(a) contractors, the items, or the work.

Tasks	FAR Reference(s)	Additional Information
<p>2. With SBA representatives, determine whether or not to compete the 8(a) award among eligible 8(a) firms.</p>	<p>FAR 19.805 Competitive 8(a) [contracting with the Small Business Administration (the 8(a) Program)].</p>	<p>Compete an acquisition offered to the SBA under the 8(a) Program among eligible 8(a) firms if:</p> <ul style="list-style-type: none"> • There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and • The anticipated total value of the contract, including options, will exceed \$6,500,000 for acquisitions assigned manufacturing NAICS codes and \$4,000,000 for all other acquisitions. <p>When an acquisition exceeds the competitive threshold, the SBA may accept the requirement for a sole source 8(a) award if:</p> <ul style="list-style-type: none"> • There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or • SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation. <p>Never divide a proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold into several requirements of lesser amounts in order to use 8(a) sole source procedures for award to a single firm.</p> <p>The SBA Associate Administrator for 8(a) Business Development may approve a request for a competitive 8(a) award below the competitive thresholds. Such requests will be approved only on a limited basis and will be primarily granted where:</p> <ul style="list-style-type: none"> • Technical competitions are appropriate; or • A large number of responsible 8(a) firms are available for competition.

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<p>3. Notify the SBA of plans to place an 8(a) contract.</p>	<p>FAR 19.804-2 Agency offering.</p>	<p>Notify the appropriate SBA District Office:</p> <ul style="list-style-type: none"> • For a construction requirement, the office for the geographical area where the work is to be performed. • For sole source requirements other than construction, the office that services the nominated firm. • For all 8(a) competition requirements other than construction, the office servicing the geographical area in which the contracting office is located. <p>In the notice, include all elements prescribed by FAR 19.804-2. Synopsise all competitive requirements, including construction. For construction, the synopsis must include the geographical area of the competition set forth in the SBA's acceptance letter.</p>
<p>4. Await the SBA's determination regarding whether to accept the requirement for the 8(a) Program.</p>	<p>FAR 19.804-3 SBA acceptance [contracting with the Small Business Administration (the 8(a) Program)].</p>	<p>If SBA does not respond to an offering letter for a requirement estimated to exceed the simplified acquisition threshold within ten days, the contracting activity may seek SBA's acceptance through the Associate Administrator.</p> <p>If SBA does not respond to an offering letter on behalf of a specific 8(a) firm for a requirement estimated to not exceed the simplified acquisition threshold within two days, the contracting activity may assume the offer is accepted and proceed with award of an 8(a) contract.</p>
<p>5. Solicit and evaluate offer(s) from 8(a) sources.</p>	<p>FAR 19.805-2 Procedures [competitive 8(a)].</p>	<p>When using 8(a) competition:</p> <ul style="list-style-type: none"> • Solicit offers from the sources identified in accordance with FAR 19.804-3. • Offers may be solicited and evaluated using sealed bidding or negotiated acquisition procedures. • Competitive offer evaluation must consider the award criteria identified in the solicitation.

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<p>6. When using negotiation procedures, conduct any necessary negotiations with the SBA and/or the 8(a) contractor(s).</p>	<p>FAR 19.808-1 Sole source [contract negotiation]. FAR 19.808-2 Competitive [contract negotiation].</p>	<p>In a sole source negotiation, the SBA:</p> <ul style="list-style-type: none"> • Is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources. • Should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract. <p>In a competitive negotiation under FAR Part 15:</p> <ul style="list-style-type: none"> • Negotiate directly with the competing 8(a) firms. • Conducting competitive negotiations among 8(a) firms prior to SBA's formal acceptance of the acquisition for the 8(a) Program may be grounds for SBA's not accepting the acquisition for the 8(a) program.
<p>7. Upon selection of a successful offeror, await the SBA's determination regarding the eligibility of the successful offeror.</p>	<p>FAR 19.805-2 Procedures [competitive 8(a)].</p>	<p>The SBA will determine the eligibility of the firms for award of the contract as of the time of submission of initial offers, which include price.</p> <p>The SBA will notify the firm if a determination of ineligibility is made.</p> <p>The eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a solicitation or proposed contract award.</p>

Tasks	FAR Reference(s)	Additional Information
<p>8. Determine whether the award would be at a fair market price.</p>	<p>FAR 19.806 Pricing the 8(a) contract [contracting with the Small Business Administration (the 8(a) Program)].</p> <p>FAR 19.807 Estimating fair market price [contracting with the Small Business Administration (the 8(a) Program)].</p>	<p>Evaluate price reasonableness using the procedures for price analysis, cost analysis, and cost realism analysis in FAR 15.404. Also:</p> <ul style="list-style-type: none"> • If required, the SBA must obtain cost or pricing data from the 8(a) contractor. • If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity must furnish it to the extent it is available. • An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price. • If requested by the SBA, make available the data used to estimate the fair market price within ten working days. • The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement with the SBA, the SBA Administrator may appeal to the agency head.
<p>9. Determine whether it would be useful to request a preaward survey.</p>		<p>Request a preaward survey of the 8(a) contractor whenever considered useful for evaluating responsibility.</p>
<p>10. Refer responsibility issues to SBA for Certificate of Competency (COC) consideration.</p>	<p>FAR 19.602-1 Referral [certificates of competency and determinations of responsibility].</p> <p>FAR 19.800 General [contracting with the Small Business Administration (The 8(a) Program)].</p>	<p>If the results of the preaward survey or other available information raise substantial doubt as to the firm's ability to perform, refer the matter to SBA for Certificate of Competency consideration.</p> <p>See Activity 22, Responsibility Determination.</p>

Tasks	FAR Reference(s)	Additional Information
<p>11. After receiving notification of the SBA's COC issuance or denial, determine whether to appeal the decision.</p>	<p>FAR 19.602-2 Issuing or denying a Certificate of Competency (COC). FAR 19.602-3 Resolving differences between the agency and the Small Business Administration.</p>	<p>If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its procuring agency's Director, OSDDBU, or other designated official, within 10 business days (or a time period agreed upon by both agencies) that it intends to appeal the issuance of the COC.</p>
<p>12. If applicable, respond to an SBA Administrator appeal to the agency head.</p>	<p>FAR 19.810 SBA appeals [contracting with the Small Business Administration (the 8(a) Program)].</p>	<p>The SBA Administrator may appeal to the agency head concerning a contracting officer decision:</p> <ul style="list-style-type: none"> • Not to make a particular acquisition available for award under the 8(a) Program. • To reject a specific 8(a) firm for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) Program. • On the terms and conditions of a proposed 8(a) contract, including the NAICS code designation and estimate of the fair market price. <p>Pending issuance of a decision by the agency head, suspend acquisition action, unless the contracting officer determines, in writing, that urgent and compelling circumstances significantly affecting the interests of the United States will not permit waiting for a decision.</p> <p>Provide all information requested by the agency head related to the appeal and response preparation.</p> <p>Make the agency head's decision part of the contract file.</p>

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13. Prepare appropriate contract documents.	FAR 19.811 Preparing the contracts [contracting with the Small Business Administration (the 8(a) Program)].	<p>For sole source contracts, use the Standard Form 26 as the award form, except for construction contracts, in which case the Standard Form 1442 must be used. Generally, when awarding a sole source contract:</p> <ul style="list-style-type: none"> • Prepare the contract either: <ul style="list-style-type: none"> ○ With the SBA following agency procedures and in the same detail as would be required in a contract with a business concern; and ○ That the SBA will award to the 8(a) contractor following agency procedures, as if the agency were awarding the contract directly to the 8(a) contractor, except for the changes required by FAR 19.811-1(b); or ○ Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may use a single tripartite contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. <p>In a competitive acquisition, prepare the contract following the requirements of FAR 14.408-1(d), except for the changes required by FAR 19.811-2(a) to implement a tripartite agreement.</p> <p>If an agency has a memorandum of understanding (MOU) with the SBA that establishes a different procedure, follow the MOU procedure.</p>