

# Final Policy Directive, Small Business Competitiveness Demonstration Program

OFFICE OF MANAGEMENT AND BUDGET  
OFFICE OF FEDERAL PROCUREMENT POLICY  
SMALL BUSINESS ADMINISTRATION

## Final Policy Directive, Small Business Competitiveness Demonstration Program

**AGENCY:** Office of Federal Procurement Policy (OFPP), Small Business Administration (SBA)

**ACTION:** Notice of final policy directive

**SUMMARY:** The OFPP and SBA are issuing a final policy directive and implementation plan to implement the Small Business Competitiveness Demonstration Program established by the Small Business Competitiveness Demonstration Program Act of 1988 (P.L. 100-656), as amended, 15 U.S.C. 644 note. As a result of comments received following publication of an interim policy directive and implementation plan in the *Federal Register* on September 19, 1998 (63 FR 51981), we are revising the interim policy directive and implementation plan as indicated below. The changes to the implementation plan include:

1. We added a new subparagraph 7. in section III.A. to make clear that the very small business pilot program does not apply to any requirement that is subject to the Small Business Competitiveness Demonstration Program.
2. We revised section IIIC.1. to allow participating agencies to apply the 40 percent small business goal separately for east coast non-nuclear ship repair and west coast non-nuclear ship repair.
3. We revised section IVA.5. to clarify that SBA has the authority to request quarterly reports from the Federal Procurement Data System (FPDS) to monitor agencies' progress towards meeting their annual goals.
4. We revised section V.A.1 to delete reference to the solicitation date, but retained the requirement for agencies to distinguish awards made under the Program from other contract awards.

**EFFECTIVE DATE:** October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Linda G. Williams, Deputy Associate Administrator, (202) 395-3302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Congress established the Small Business Competitiveness Demonstration Program in 1988 to test the effectiveness of eliminating small business set-asides in certain industries. (See P.L. 100-656, the Small Business Competitiveness Demonstration Program Act of 1988 ("Act"), as amended, at 15 U.S.C. 644 note.) The Program has two primary objectives: (1) to demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targeted goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. A separate program to expand small business participation in the dredging industry, to be overseen by the Department of the Army, was also included in the Act. As originally established, the Demonstration Program extended through December 31, 1992.

To implement the Program, Congress in Section 715(a) of the Act, authorized the OFPP Administrator to issue a test plan pursuant to Section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413). In addition, in Section 715(b), Congress directed the OFPP Administrator, in cooperation with the SBA Administrator, to issue a policy directive (binding on all participating agencies) to ensure consistent government-wide implementation of the Act in the Federal Acquisition Regulation (FAR).

After requesting public comment on an interim policy directive and test plan (53 FR 52889 (December 29, 1988)), OFPP implemented the Program by issuing a final policy directive and test plan dated August 31, 1989, 54 FR 37741 (September 12, 1989). In accordance with section 715(b) of the Act, the policy directive and test plan were implemented in the FAR (48 C.F.R. Subpart 19.10).

In 1992, Congress in Sections 201-203 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (P.L. 102-366; "1992 Act"), extended the Demonstration Program through September 30, 1996, and made amendments to the Program. To carry out these amendments, Congress in Section 202(i) of the 1992 Act directed the OFFP Administrator to issue conforming modifications to the test plan and policy directive. The conforming modifications were issued in an interim policy directive with request for comments (58 FR 19849, April 16, 1993), and were incorporated into the FAR (48 C.F.R. Subpart 19.10). In 1996, Congress extended the Demonstration Program for one year, through September 30, 1997. P.L. 104-208, Div. D, Title I, Sec. 108. In 1997, Congress also extended the aspect of the Program covering expansion of small business participation in the dredging industry. P.L. 105-18, Title II, Sec. 2002.

In December 1997, the Small Business Reauthorization Act of 1997 (P.L. 105-135) was enacted into law ("1997 Act"). Sections 401-405 of the 1997 Act made the Demonstration Program permanent, and made further amendments to the Program.

In order to respond to the comments that we received on the April 1993 interim policy directive and test plan, and to make conforming changes to reflect the amendments made by the 1997 Act, we issued a newly revised interim OFPP policy directive and implementation plan on September 29, 1998. In addition to making conforming revisions to reflect the amendments made by Congress in the 1997 Act, we made non-substantive revisions in various parts of the document, which are intended to improve its clarity. For ease of reading, we reissued the interim policy directive and implementation plan in its entirety for comment.

## **B. Public Comments**

OFPP received seven letters in response to the request for comments on the September 29, 1998, interim policy directive and implementation plan. A summary of the main issues and concerns raised in the comments follows:

1. *Comment:* SBA should change the small business size standard for the construction industry to make appropriate adjustments for inflation.

*Response:* SBA is reviewing the size standards for construction and will make adjustments for inflation if deemed necessary. SBA will publish any new size standards in the *Federal Register* for public comment. No changes to the policy directive and implementation plan would be necessary because they do not contain the size standards. SBA size standards are published in the FAR.

2. *Comment:* The policy directive should allow subcontract awards to count towards the 40 percent small business goal in construction. OFPP should continue and expand the use of the simplified data collection system for architectural and engineering (A&E) services, which expired on September 30, 1997, to allow participating agencies to track subcontract awards under construction contracts. If agencies cannot count subcontracts to small businesses towards their goal accomplishments, the policy directive should exempt task order contracts for construction. In addition, the policy directive ignores the provision at 713(b) of P.L. 100-656, which establishes a 35 percent goal for A&E until the subcontracting reporting system is implemented.

*Response:* The commenter states that agencies with recurring construction needs use task order IDIQ contracts to respond quickly to maintenance, alteration, and repair services. Under these task order contracts, small businesses perform more than 75 percent of the work as subcontracts. We support the use of small businesses as subcontractors under construction projects. However, there is no statutory basis to require participating agencies to count subcontracts to small businesses toward goal

achievement for A&E services or to expand the subcontracting reporting system to other industries. As the commenter recognizes, section 714(b) of P.L. 100-656, which required OFPP to develop a simplified data collection system to collect data on the participation of small business concerns as subcontractors under prime contracts for A&E services, expired on September 30, 1997. Accordingly, the implementation plan excludes the subcontracting reporting system and deletes reference to the 35 percent goal for A&E services. Under current law, each participating agency has a small business goal that is 40 percent of the agency's total contract dollars awarded in each designated industry group. Participating agencies determine their small business goal achievement using prime contract award data.

3. *Comment:* The policy directive should not refer to the Program as a "demonstration" program since it was extended indefinitely by the Small Business Reauthorization Act of 1997.

*Response:* The Small Business Reauthorization Act did not amend section 711(a) of P.L. 100-656 to rename the Program. Section 711(a) established the Program as the "Small Business Competitiveness Demonstration Program." Therefore, we do not believe it is appropriate to change the Program title.

4. *Comment:* The policy directive substitutes "unrestricted competition" for "full and open competition" throughout the document whenever it refers to procurements below the simplified acquisition threshold (SAT) but above the emerging small business reserve amount. The directive also allows for "maximum practicable competition" below the simplified acquisition threshold. The references to "unrestricted competition" and "maximum practicable competition" should be amended to confirm that neither phrase excludes "Brooks Act A&E procurements" from its terms.

*Response:* Contrary to the commenter's statement, the policy directive substitutes "unrestricted competition" for "full and open competition" throughout the interim policy directive for all procurements, not just those below the SAT and above the emerging small business reserve amount. As explained in the preamble to the Sept 29, 1998 interim policy directive, we used the term "unrestricted competition" to encompass both agencies' use of "maximum practicable competition" for procurements below the SAT and "full and open competition" for procurements above the SAT. This is necessary because the Federal Acquisition Streamlining Act and the Competition in Contracting Act establish different competition standards for procurements above and below the SAT. This change does not affect the qualification-based selection procedures for acquiring A&E services because these procedures are considered full and open competition under FAR Subpart 6.102.

5. *Comment:* FAR 19.1202-2 provides that the extent of small disadvantaged business (SDB) participation shall be an evaluation factor in competitive procurements over \$500,000 (\$1 million in construction) and does not list the Small Business Competitiveness Demonstration Program as an exception. This is contrary to the intent of the Program which seeks to provide an open competition among firms with qualifications and experience related to the scope of work. By reference to

"construction" it is clear that FAR 19.1202-2 does not recognize the exemption for the four designated industry groups from restraints on their competition. FAR 19.1202-2 seeks to impose an evaluation factor inconsistent with either the "unrestricted competition" or full and open competition" terminology used in the Program. OFPP should change the final directive to resolve the conflict with FAR 19.1202-2.

*Response:* The policy directive and the SDB reform program are consistent. FAR Subpart 19.12 requires agencies to use the SDB participation evaluation factor (FAR 19.1202) in certain unrestricted negotiated procurements. Agencies use the SDB participation evaluation factor along with other evaluation factors or subfactors to determine the successful contractor. The use of this evaluation factor is consistent with the "unrestricted competition" terminology used in the Program.

6. *Comment:* There is no statutory basis to reimpose set-asides in the event small business participation in a SIC code falls below 35 percent even if the major group exceeded the 40 percent small business goal.

*Response:* The legislative history supporting P.L. 100-656 states that consistent efforts shall be made to achieve the 40 percent small business goal and the 15 percent emerging small business goal evenly across all the SIC codes that comprise a designated industry group. Firms within individual SIC codes shall not be disproportionately burdened. Therefore, to comply with the legislative intent, we included the requirement for set-asides to be reimposed when an individual SIC code falls below 35 percent even if the industry group exceeded 40 percent.

7. *Comment:* Transferring from OFPP to SBA the responsibility to report to the Congress within 180 days after FPDS data are available should not deter or disrupt an agency's process of maintaining or returning, by the start of the calendar year, to open competition where such action is supported by the data. The directive should make clear that there is no congressional action required prior to agency action on data from the prior fiscal year.

*Response:* The Federal Register notice preamble mentions SBA's responsibility to report to the Congress on the results of the Program. However, there is no mention of a Congressional requirement in the directive and implementation plan. Rather, the implementation plan (Paragraph IIID.2.c.) makes clear that agencies must make appropriate changes to solicitation practices (reinstating restricted competition or reinstating unrestricted competition) not later than 30 days following their annual reviews.

8. *Comment:* The final policy directive should separate east and west coast non-nuclear ship repair when monitoring goal achievement rather than considering performance of the industry as a whole.

*Response:* The comments suggest that small business participation in non-nuclear ship repair is significantly different on the east coast and the west coast. Small firms are performing above the 40 percent goal on the east coast while performance on the west coast is below the 40 percent goal. The comments suggest that the policy directive should recognize the non-nuclear ship repair industry as two separate markets, rather than monitoring small business performance for the industry as a whole. We believe this suggestion has merit. Therefore, we will revise the Policy Directive and Implementation Plan to allow participating agencies to apply the 40 percent small business goal separately for east coast non-nuclear ship repair and west coast non-nuclear ship repair.

9. *Comment:* The policy directive should allow organizational units within a participating agency to return to unrestricted competition independent of the overall agency review to determine if the goal has been met.

*Response:* Section 712(d) of P.L. 100-656 requires participating agencies to monitor attainment of small business goals. Any modification to a participating agency's solicitation practices (using restricted or unrestricted competitions) shall be made as soon as possible after the agency's annual review. Allowing organizational units within a participating agency to return to unrestricted or restricted competition independent of the overall agency review would be contrary to the statutory intent.

10. *Comment:* It is not clear why the policy directive excludes awards made under Federal supply schedules (FSS) contracts from being covered by the Program. Given the increased emphasis on the use of FSS contracts, exclusion of these awards could distort small business participation in the designated industry groups. Consideration should be given to allowing participating agencies to count awards under FSS contracts in the designated industry groups toward their small business goals under this program.

*Response:* We did not include FSS contracts when the Program began because there were no FSS contracts for the services in the four designated industries groups. In addition, SBA historically did not count such awards toward attainment of the government-wide small business goal. Although SBA now allows agencies to count awards under the FSS contracts toward the government-wide goal, there still are no schedule contracts for the designated industry groups covered by the Program. Therefore, the Policy Directive will continue to exclude awards under the FSS from coverage in the Program.

11. *Comment:* The policy directive should include language that gives SBA the authority to obtain regular quarterly reports from the Federal Procurement Data System to monitor agencies' progress in meeting their goal attainment under the Program.

*Response:* SBA already has the authority to obtain quarterly reports from the Federal Procurement Data System to monitor agencies' progress toward meeting their annual goals. For purposes of clarity, however, we will revise section IV.A.5. of the implementation plan to include SBA's authority.

12. *Comment:* OFPP should establish a web site to maintain a current statement of the emerging small business reserve amount and include the web site in the implementation plan.

*Response:* OFPP has made only one adjustment to the emerging small business reserve amount (for architectural and engineering services) since the beginning of the Program. Therefore, we believe a Federal Register notice is the most appropriate way to provide notice of any change in the reserve amount. We also will include the final policy directive and any subsequent changes to it on the Acquisition Reform Network (ARNet).

13. *Comment:* The policy directive should no longer require participating agencies to track awards made outside the Program because the requirement has outlived its usefulness.

*Response:* It is essential that participating agencies distinguish awards made under the Program from other contract awards so that SBA and other data users can easily retrieve information about the Program. We do, however, believe that a reference to the solicitation date is no longer necessary. Therefore, we will revise the language in section V.A.1 accordingly.

### **C. Regulatory Flexibility Act Statement and Review under E.O. 12866**

OFPP and SBA certify that the changes made by this final directive will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because this final directive makes ministerial changes to the Program required by the Small Business Reauthorization Act of 1997 (Sections 401-405 of Public Law 105-135). For this same reason, the changes made by this final directive are not "significant" under Executive Order 12866.

For those interested in the overall economic scope and effect of this Program, we note that SBA forwards a report to Congress on an annual basis describing the economic impact of the program, and that copies of such report are available from SBA.

### **D. Paperwork Reduction Act**

The information collection requirements related to this policy directive and implementation plan were previously approved by OMB and assigned OMB control number 9000-0100. A revised information collection request was submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Public comments concerning this request were invited through a Federal Register notice published on September 29, 1998. No comments were received.

**Deidre A. Lee**

*Administrator Associate*

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**Richard L. Hayes**

*Deputy Administrator*

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*Small Business Administration*

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MEMORANDUM FOR: THE SECRETARY OF AGRICULTURE  
THE SECRETARY OF DEFENSE  
THE SECRETARY OF ENERGY  
THE SECRETARY OF HEALTH AND HUMAN SERVICES  
THE SECRETARY OF THE INTERIOR  
THE SECRETARY OF TRANSPORTATION  
THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY  
THE ADMINISTRATOR OF GENERAL SERVICES  
THE ADMINISTRATOR OF THE NATIONAL  
AERONAUTICS AND SPACE ADMINISTRATION  
THE SECRETARY OF VETERANS AFFAIRS

SUBJECT: The Small Business Competitiveness Demonstration Program

1. *Purpose.* This memorandum provides policy direction to the participating agencies for implementation of the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100-656), as amended by Sections 23-27 of the Business Opportunity Development Reform Act Technical Corrections Act (Public Law 101-37), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), Section 108 of the Omnibus Consolidation Appropriation Act of 1997 (Public Law 104-208), and Sections 401-405 of the Small Business Reauthorization Act of 1997 (Public Law 105-135).

2. *Authority.* This memorandum is issued pursuant to Section 715 of Public Law 100-656, which requires that the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA) issue a policy directive to ensure consistent government-wide implementation of Title VII in the Federal Acquisition Regulation (FAR); Section 202(i) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), which requires appropriate modifications to the policy directive to conform to amendments made by that Act; Sections 401-405 of the Small Business Reauthorization Act of 1997 (Public Law 105-135), which further amends Title VII; and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.



3. *Background.* Section 15(a) of the Small Business Act mandates that small businesses receive a fair proportion of Federal procurements. To achieve this goal, Subpart 19.5 of the FAR requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when a contracting officer determines that two or more small businesses are capable of providing the goods or services at reasonable prices. While restricting procurements for exclusive small business participation has been very effective in assuring a small business share of Federal contracts, one unintended result is a concentration of awards in certain industries often dominated by small businesses. A further result is that agencies expend resources in those industries that are conducive to high levels of small business participation rather than expand the base of small business contracting into areas where small businesses do not traditionally obtain a significant share of procurement awards.

4. *Policy.* The goals of the Program are to assess the ability of small businesses in certain designated industry groups to retain a fair proportion of procurement awards in unrestricted competition in those industry groups and to expand small business participation in a broader range of industry categories. The Act designates the Small Business Administration as OFPP's executive agent to monitor the Program. The procedures for implementing the Program are set forth in the attached implementation plan.

5. *Implementation.* This policy directive shall be implemented in FAR Part 19. Pursuant to Section 715(a) of the Small Business Competitiveness Demonstration Program Act, provisions of the FAR that are inconsistent with this policy directive and the attached implementation plan are hereby waived.

6. *Expiration Date.* The Small Business Competitiveness Demonstration Program has no expiration date.

**Deidre A. Lee**

*Administrator Associate*

*Office of Federal Procurement Policy*

**Richard L. Hayes**

*Deputy Administrator*

*for Government Contracting and*

*Minority Enterprise Development*

*Small Business Administration*

## **I. PURPOSE**

This document implements the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100-656), as amended by Sections 23-27 of the Business Opportunity Development Reform Act Technical Corrections Act (Public Law 101-37), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), Section 108 of the Omnibus Consolidation Appropriations Act of 1997 (Public Law 104-208), and Sections 401-405 of the Small Business Reauthorization Act of 1997 (Public Law 105-135). The Program seeks to assess whether or not the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. In addition, the Program attempts to assess whether or not the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in Federal contracting opportunities that have been historically low despite adequate numbers of qualified small business contractors in the economy. The Program further seeks to assess whether or not expanded use of unrestricted competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

## **II. AUTHORITY**

The Program is established pursuant to the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100-656), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), Sections 401-405 of the Small Business Reauthorization Act of 1997 (Public Law 105-135), and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413.

## **III. PROGRAM REQUIREMENTS**

### **A. Applicability**

1. The Program began on January 1, 1989 and consists of two major components: (1) unrestricted competition in four Designated Industry Groups, and (2) enhanced small business participation in agencies' ten Targeted Industry Categories. Contracts resulting from solicitations issued on or after January 1, 1989 and any subsequent modifications to such contracts, are covered by this Program.
2. Contract awards in the following designated industry groups are covered by this Program:

- a. Construction under standard industrial classification (SIC) codes that comprise major groups 15, 16, and 17 (excluding dredging -- Federal Procurement Data System (FPDS) service codes Y216 and Z216);
  - b. Refuse systems and related services, including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205;
  - c. Architectural and engineering (A&E) services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act"); and
  - d. Non-nuclear ship repair -- ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).
3. Upon regulatory implementation by SBA and the FAR Council, the North American Industry Classification System (NAICS) codes will be substituted for SIC codes.
  4. Targeted industry categories for enhanced participation are determined by each participating agency, in conjunction with SBA.
  5. Contract awards under the Federal Schedule Program are not covered by the Program.
  6. Contract awards to educational and non-profit institutions or governmental entities are not covered by the Program.
  7. The Very Small Business Pilot Program does not apply to any requirement that is covered by the Program.

#### B. Participating Agencies

The following agencies are participants in the Program:

1. The Department of Agriculture,
2. The Department of Defense, except the National Imagery and Mapping Agency,
3. The Department of Energy,

4. The Department of Health and Human Services,
5. The Department of Transportation,
6. The Environmental Protection Agency,
7. The General Services Administration,
8. The National Aeronautics and Space Administration,
9. The Department of Veterans Affairs, and
10. The Department of the Interior.

#### C. Agency Goals for the Four Designated Industry Groups

1. Each participating agency shall have a small business participation goal that is 40 percent of the agency's total contract dollars awarded for construction major group 15, major group 16, and major group 17; A&E services; refuse systems and related services; east coast non-nuclear ship repair; and west coast non-nuclear ship repair. The 40 percent goal applies separately to each construction major group and to east coast and west coast non-nuclear ship repair. In addition, each participating agency must make a good faith effort to assure that emerging small businesses receive not less than 15 percent of the agency's total contract dollars awarded for each of the four designated industry groups.
2. The Small Business Competitiveness Demonstration Program Act of 1988 defines an emerging small business as one whose size is no greater than 50 percent of the numerical size standard applicable to the SIC Code assigned to the procurement. Subject to the requirements of paragraph III.D.3 below, contract opportunities in the four designated industry groups, which have an estimated award value equal to or less than the reserve amount established for emerging small businesses, are reserved for such businesses.
3. Contract awards made to fulfill the 15 percent goal for emerging small businesses also count toward attainment of the 40 percent goal. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135); and sole source awards, count toward attainment of goals.

#### D. Procurement Procedures for the Four Designated Industry Groups

Participating agencies shall use the following procedures for procurements in the four designated industry groups.

1. Unrestricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount
  - a. Subject to the requirements of the Competition in Contracting Act of 1984 and section 4201 of the Federal Acquisition Streamlining Act of 1994, participating agencies are required to use unrestricted competition for all solicitations in the four designated industry groups, if the anticipated award value exceeds the dollar amount reserved for emerging small businesses (unless the procurement is placed under section 8(a) of the Small Business Act; or is set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135). Each participating agency shall continue to use unrestricted competition as long as annual reviews show that the agency's 40 percent goal is being attained. The continued use of unrestricted competition is not affected by an agency's failure to meet its 15 percent award goals for emerging small businesses.
  - b. Notwithstanding the provisions of paragraph III.D.1.a., above, the Department of Defense shall solicit contracting opportunities for A&E services (including surveying and mapping), in accordance with the provisions of subsections (a) and (b) of section 2855 of title 10, United States Code.
2. Restricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount.
  - a. If any participating agency's annual review of its awards to small businesses in the four designated industry groups shows that the agency has failed to attain its 40 percent goal for any of the groups, subsequent contracting opportunities, in excess of the amount reserved for emerging small businesses, shall be solicited through competition restricted to eligible small businesses only at the organizational unit(s) within the agency that failed to attain the small business participation goals. (Organizational unit(s) shall be no larger than the major agency components or services, e.g., Army, Air Force, Navy, etc. for Department of Defense, regional offices for the General Services Administration, or space flight and research centers for the National Aeronautics and Space Administration.) Such solicitations (unless placed under section 8(a) of the Small Business Act or set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135) shall be conducted in accordance with section 15(a) of the Small Business Act and Subpart 19.5 of the Federal Acquisition Regulation (FAR).
  - b. Agencies shall return to the use of unrestricted competition upon determining, after their annual review, that their contract awards to small business concerns again meet the required goals.

c. Modifications to agency solicitation practices (instituting restricted competition and reinstating unrestricted competition) shall be made as soon as practicable, but no later than 30 days following completion of the review indicating the need for such change. The reinstatement of restricted competition or unrestricted competition shall be announced to the public through a notice published in the *Federal Register* if restricted or unrestricted competition is to be reimposed broadly by a participating agency. "Special notices" in the *Commerce Business Daily* shall be used periodically to supplement such *Federal Register* notices, and may be used as an alternative means of providing such notices, if the reinstatement of restricted competition or unrestricted competition will affect only a limited number of buying activities.

### 3. Reserve Program for Emerging Small Businesses

- a. The emerging small business reserve amount is \$25,000, or such higher amount as OFPP sets in the event that emerging small concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the four designated industry groups. The emerging small business reserve amount for architectural and engineering services is \$50,000 (56 Federal Register 46656, September 13, 1991). Any required adjustments to the emerging small business reserve amount will be made annually by industry group.
- b. Competition for all contract opportunities in the four designated industry groups with an estimated award value that is equal to or less than the emerging small business reserve amount shall be restricted to emerging small businesses, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, requirements will be processed in accordance with FAR 19.5 or FAR 19.8. However, if no such reasonable expectation exists where OFPP has raised the small business reserve amount to a level over \$25,000, requirements over \$25,000 will be processed in accordance with paragraphs III.D.1 and III.D.2, above.
- c. c. The use of simplified acquisition procedures is not required under the reserve program; any competitive source selection method may be used. The reserve program applies only to new awards within the emerging small business reserve threshold. Modifications within the scope of work of contracts having an initial award value in excess of the emerging small business reserve amount are not subject to the reserve program.

d. Each solicitation under the Program that utilizes simplified acquisition procedures shall include the applicable SIC code and size standard for the procurement.

4. Solicitation Provisions for Procurements in the Four Designated Industry Groups

a. The provision set forth in FAR 52.219-19 entitled "Small Business Concern Representation for the Small Business Competitiveness Demonstration Program" shall be inserted in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

b. The provision set forth in FAR 52.219-20 entitled "Notice of Emerging Small Business Set-Aside" shall be inserted in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

c. The face of each award issued by a participating agency under the Small Business Competitiveness Demonstration Program for the four designated industry groups shall contain a statement that the award is being issued pursuant to such Program.

E. Agency Programs for Targeted Industry Categories With Limited Small Business Participation

1. Each participating agency is required to select ten industry categories (four-digit SIC Code or some segmented portion(s) of such code(s), as identified by FPDS product or service code) as targeted categories for expansion of small business participation.

2. In order to achieve such expanded participation, agencies shall select categories that represent products and services purchased in substantial quantities by the agency; that historically have had a small business participation rate of less than 10 percent by category, and in which there is a significant amount of small business productive capacity that has not been utilized by the Government.

3. Each participating agency shall consult with the Administrator of SBA in selecting the ten targeted categories, developing the plan for expanded small business participation, and establishing the goals for the Program. Upon completion of their consultation with SBA, participating agencies shall publish in the *Federal Register*, an announcement soliciting public comment on that agency's program for expansion of small business participation in the targeted categories. Each participating agency shall notify SBA of any additions or deletions to the ten targeted industry categories. Subsequent to the SBA

notification, the participating agency shall publish the changes in the *Federal Register*.

4. Each plan shall be submitted to the Administrator of SBA and shall contain a detailed time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be included. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability. Such joint ventures or teams shall comply with the applicable small business guidelines. (See 13 C.F.R. §§121.103(f) and 121.105(b)).
5. Participating agencies shall report to SBA on the results of the expansion program regarding the ten targeted categories on the same annual schedule as required for the four designated industry groups.
6. Goal attainment for the ten targeted industry categories shall be determined on the basis of awards to U.S. business firms. Participating agencies may use the format in Attachment A to report accomplishments.
7. The provision set forth in FAR 52.219-21 entitled "Small Business Size Representation For Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program" shall be inserted in full text in any solicitation issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of \$25,000.
8. The face of each award issued in any of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program shall contain a statement that the award is being issued pursuant to such Program.

#### **IV. MONITORING AND REPORTING FOR FOUR DESIGNATED INDUSTRY GROUPS**

##### **A. Monitoring of Goals for the Four Designated Industry Groups**

1. Each participating agency shall monitor attainment of its small business and emerging small business participation goals on an annual basis and provide the information in a written report to SBA. The report shall specify the industry groups for which restricted or unrestricted competition have been imposed. Agencies shall complete their annual reviews and submit their reports not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30. The



Department of Defense shall submit a report that separately identifies performance by the Army, Air Force, Navy and the Defense Agencies. The report submitted by the General Services Administration shall separately identify performance by the Public Building Service.

2. Monitoring and reporting of goal attainment will be based on awards (and any subsequent modifications to those awards) in the individual codes comprising the industry, as specified in paragraph IV.B., below.
3. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's small business participation goals (instituting restricted competition or reinstating unrestricted competition) will be accomplished for each of the industry groups as follows:
  - a. Construction (excluding dredging)
    - i. Major group 15
    - ii. Major group 16
    - iii. Major group 17
  - b. Refuse systems and related services.
  - c. A&E services (including surveying and mapping), limited to contracts awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act").
  - d. Non-nuclear ship repair.
    - i. FPDS Code J998 (East Coast)
    - ii. FPDS Code J999 (West Coast)

However, if goal attainment for any individual FPDS service code within the A&E services industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual service code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the industry group is 40 percent or more. In addition, if goal attainment for any individual SIC code within one of the major groups comprising the construction industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual SIC code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the major group is 40 percent or more. The 35 percent rule does not apply to refuse systems and related services,

east coast non-nuclear ship repair, and west coast non-nuclear ship repair because there are no individual FPDS service codes or SIC codes within the major group.

4. Agencies shall monitor goal attainment in the four designated industry groups by reviewing total prime contract award dollars to (a) all U.S. business firms, (b) small U.S. business concerns and (c) emerging small U.S. business concerns. Awards to educational and non-profit institutions or governmental entities are not part of the Program and do not count towards goal attainment.
5. SBA will closely monitor the Program to ensure that each participating agency makes a consistent effort to achieve goals evenly across all individual codes that comprise a designated industry group. SBA may obtain quarterly reports from the FPDS using the format set forth at Attachment A to monitor agencies' progress during the fiscal year.
6. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135); and sole source awards, count toward attainment of goals.

#### B. Codes for Monitoring and Reporting Goal Attainment For the Four Designated Industry Groups

##### 1. Refuse Systems and Related Services

The Small Business Competitiveness Demonstration Program Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SIC codes 4212 and 4953 include services that should not be included in the Program. The Program is designed to assess small firms' competitiveness generally in procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse, and waste materials. For example, contracts for the regular collection and disposal at publicly or privately operated landfills of residential and nonhazardous commercial solid waste, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities, and garbage processing and recycling activities, should be included. Contracts for the operation of those facilities, collection and disposal of acid, radioactive, or other hazardous waste should not be included. Therefore, participating agencies shall use FPDS service code S205 (trash/garbage collection services - including portable sanitation services) to monitor goal attainment for refuse systems and related services.

2. Architectural and Engineering Services

- a. The Small Business Competitiveness Demonstration Act of 1988 provides that A&E services (including surveying and mapping) shall include contracts assigned SIC codes 8711, 8712, 8713, and 7389 (if identified as mapping), and awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act"). Since SIC code 7389 includes many more services than mapping, participating agencies shall use the following FPDS service codes to monitor goal attainment for mapping services:

T002 Cartography services

T004 Charting services

T008 Photogrammetry services

T009 Aerial photographic services

T014 Topography services

- b. Participating agencies shall use the following FPDS service codes to monitor A&E services under SIC codes 8711, 8712, and 8713:

C111 Administrative and Service Buildings

C112 Airfield, Communication and Missile Facilities

C113 Educational Buildings

C114 Hospital Buildings

C115 Industrial Buildings

C116 Residential Buildings

C117 Warehouse Buildings

C118 Research and Development Facilities

C119 Other Buildings

C121 Conservation and Development

C122 Highways, Roads, Streets and Bridges

C123 Electric Power Generation (EPG)

C124 Utilities

C129 Other Non-Building Structures

C130 Restoration

C211 Architect - Engineer Services (non-construction)

C212 Engineering Drafting Services

C213 A&E Inspection Services (non-construction)

C214 A&E Management Engineering Services  
C215 A&E Production Engineering Services  
C216 Marine A&E Services  
C219 Other Architect and Engineering Services  
R404 Land Surveys, Cadastral Services -- non construction

3. Non-nuclear Ship Repair

Non-nuclear ship repair is included within SIC code 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

4. Construction

Goal attainment for construction shall be monitored through the use of the SIC codes identified in Attachment A.

**V. FPDS Data Collection Requirements**

Participating agencies shall maintain and report procurement data to the Federal Procurement Data System (FPDS) in order to determine the level of small business participation in the four designated industry groups and the ten targeted industry categories for the small business expansion program.

A. Awards in Excess of \$25,000

For contract awards in excess of \$25,000, the FPDS (1) has information on the SIC code of the procurement and (2) can distinguish awards to small business concerns and small disadvantaged business concerns, as required by section 714(c) of the Small Business Competitiveness Demonstration Program Act of 1988. However, for purposes of the Program, the FPDS reporting requirements have been revised to also:

1. Distinguish awards made under the Program in the four designated industry groups and the targeted industry categories.

2. Distinguish emerging small business firms from other small businesses. Participating agencies must make a good faith effort to award not less than 15 percent of the dollar value of awards in the four designated industry groups to emerging small businesses.
3. Distinguish awards to emerging small business firms in the small business reserve program. Participating agencies must reserve for exclusive competition among emerging small business concerns all contracts of \$25,000 or less in the four designated industry groups or a greater amount set by OFPP if the 15 percent goal is not attained. Emerging small businesses can also receive awards above the small business reserve threshold.
4. Provide the size of the small business concern in terms of number of employees or dollar volume of sales for awards in the four designated industry categories and ten targeted industry categories. Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size of the small business concern receiving any award for services in the four designated industry groups and products or services in the ten targeted industry categories. The number of employees shall be based on the average of the pay periods for the last twelve months. The volume of sales shall be based on the average annual gross revenue for the last three fiscal years (See FAR 19.101).
5. Limit A&E services to contracts awarded under the qualification-based selection procedures of 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act").
6. Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

B. Awards of \$25,000 or less

Each award of \$25,000 or less made by a participating agency for the procurement of a service in the four designated industry groups shall be reported to the Federal Procurement Data Center in the same manner as if the award was in excess of \$25,000. This means that all applicable data collected in the FPDS via the Individual Contract Action Report (SF 279), or agencies' equivalent computer-generated format, shall be reported for these purchases. It should be noted that awards of \$500 or less are not reportable to the FPDS.

Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

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Attachment A

**Report on Small Business Participation under the  
Small Business Competitiveness Demonstration Program  
for Designated Industry Groups**

Fiscal Year \_\_\_\_\_ Quarter \_\_\_\_\_

Agency:

Subagency (if applicable)

Designated Groups	Total US Actions/ Dollars	Small Business Actions/ Dollars*	Percentage of Dollars	Small Disadvantaged Business Actions/ Dollars	Percentage of Dollars	Emerging Small Business Actions/ Dollars	Percentage of Dollars
<b>I. Construction, excluding dredging (Dollars in Thousands; Percentage in Whole Numbers)</b>							
SIC Group 15							
1521	.....	.....	.....	.....	.....	.....	.....
1522	.....	.....	.....	.....	.....	.....	.....
1531	.....	.....	.....	.....	.....	.....	.....
1541	.....	.....	.....	.....	.....	.....	.....
1542	.....	.....	.....	.....	.....	.....	.....
Subtotal	.....	.....	.....	.....	.....	.....	.....
SIC Group 16							
1611	.....	.....	.....	.....	.....	.....	.....
1622	.....	.....	.....	.....	.....	.....	.....
1623	.....	.....	.....	.....	.....	.....	.....
1629	.....	.....	.....	.....	.....	.....	.....
Subtotal	.....	.....	.....	.....	.....	.....	.....
Designated Groups	Total US Business Actions/ Dollars	Small Business Actions/ Dollars*	Percentage of Dollars	Small Disadvantaged Business Actions/ Dollars	Percentage of Dollars	Emerging Small Business Actions/ Dollars	Percentage of Dollars
SIC& Group 10							
1711	.....	.....	.....	.....	.....	.....	.....
1721	.....	.....	.....	.....	.....	.....	.....
1731	.....	.....	.....	.....	.....	.....	.....
1741	.....	.....	.....	.....	.....	.....	.....
1742	.....	.....	.....	.....	.....	.....	.....
1743	.....	.....	.....	.....	.....	.....	.....
1751	.....	.....	.....	.....	.....	.....	.....
1752	.....	.....	.....	.....	.....	.....	.....
1761	.....	.....	.....	.....	.....	.....	.....
1771	.....	.....	.....	.....	.....	.....	.....
1781	.....	.....	.....	.....	.....	.....	.....
1791	.....	.....	.....	.....	.....	.....	.....
1793	.....	.....	.....	.....	.....	.....	.....
1794	.....	.....	.....	.....	.....	.....	.....
1795	.....	.....	.....	.....	.....	.....	.....
1796	.....	.....	.....	.....	.....	.....	.....
1799	.....	.....	.....	.....	.....	.....	.....
Subtotal	.....	.....	.....	.....	.....	.....	.....
Grand Total	.....	.....	.....	.....	.....	.....	.....
<b>II. Refuse and Related Services (Dollars in Thousands; Percentage in Whole Numbers)</b>							
PSC 5205	.....	.....	.....	.....	.....	.....	.....
Total	.....	.....	.....	.....	.....	.....	.....
<b>III. Architectural and Engineering Services, including mapping and surveying (Dollars in Thousands; Percentage in Whole Numbers)</b>							
SIC 7389:							
PSC T002	.....	.....	.....	.....	.....	.....	.....
PSC T004	.....	.....	.....	.....	.....	.....	.....
PSC T008	.....	.....	.....	.....	.....	.....	.....
PSC T009	.....	.....	.....	.....	.....	.....	.....
PSC T014	.....	.....	.....	.....	.....	.....	.....
Subtotal	.....	.....	.....	.....	.....	.....	.....
SIC 8711 or 8712 or 8713							
PSC C111	.....	.....	.....	.....	.....	.....	.....
PSC C112	.....	.....	.....	.....	.....	.....	.....
PSC C113	.....	.....	.....	.....	.....	.....	.....
PSC C114	.....	.....	.....	.....	.....	.....	.....
PSC C115	.....	.....	.....	.....	.....	.....	.....
PSC C116	.....	.....	.....	.....	.....	.....	.....
PSC C117	.....	.....	.....	.....	.....	.....	.....
PSC C118	.....	.....	.....	.....	.....	.....	.....
PSC C119	.....	.....	.....	.....	.....	.....	.....
PSC C121	.....	.....	.....	.....	.....	.....	.....
PSC C122	.....	.....	.....	.....	.....	.....	.....
PSC C123	.....	.....	.....	.....	.....	.....	.....
PSC C124	.....	.....	.....	.....	.....	.....	.....
PSC C129	.....	.....	.....	.....	.....	.....	.....
PSC C130	.....	.....	.....	.....	.....	.....	.....
PSC C211	.....	.....	.....	.....	.....	.....	.....
PSC C212	.....	.....	.....	.....	.....	.....	.....
PSC C213	.....	.....	.....	.....	.....	.....	.....
PSC C214	.....	.....	.....	.....	.....	.....	.....
PSC C215	.....	.....	.....	.....	.....	.....	.....
PSC C216	.....	.....	.....	.....	.....	.....	.....
PSC C219	.....	.....	.....	.....	.....	.....	.....
PSC R404	.....	.....	.....	.....	.....	.....	.....
Subtotal	.....	.....	.....	.....	.....	.....	.....
Grand Total	.....	.....	.....	.....	.....	.....	.....
<b>IV. Non-nuclear Ship Repair (Dollars in Thousands; Percentages in Whole Numbers)</b>							
SIC 3731:							
PSC J998	.....	.....	.....	.....	.....	.....	.....
PSC J999	.....	.....	.....	.....	.....	.....	.....
Total	.....	.....	.....	.....	.....	.....	.....
*Small Business Dollars include dollars to Emerging Small Business							

