conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see paragraph (c)(2)(ii) of this section). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-setaside portion and who accepts the award of additional quantities under the set-aside portion shall 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.-

(ii) 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-setaside part of the acquisition shall have first priority with respect to negotiations for the set-aside.

19.503–5 Methods of conducting setasides.–

Total set-asides may be conducted by using simplified acquisition procedures (see part 13), sealed bids (see part 14), competitive proposals (see part 15), or procedures for acquisition of commercial items (see part 12). Partial small business set-asides may be conducted using sealed bids (see part 14), competitive proposals (see part 15), or procedures for acquisition of commercial items (see part 12).

19.503–6 Insufficient causes for not setting aside an acquisition.–

None of the following is, in itself, sufficient cause for not setting aside an acquisition:—

- (a) A large percentage of previous contracts for the required item(s) has been placed with small business concerns –
- (b) The item is on an established planning list under the Industrial Readiness Planning Program. However, a total set-aside shall not be made when the list contains a large business Planned Emergency Producer of the item(s) who has conveyed a desire to supply some or all of the required items.—
- (c) The item is on a Qualified Products List. However, a total set-aside

shall not be made if the list contains the products of large businesses unless none of the large businesses desire to participate in the acquisition.—

(d) A period of less than 30 days is available for receipt of offers.—

- (e) The contract is classified.-
- (f) Small business concerns are already receiving a fair proportion of the agency's contracts for supplies and services.—
- (g) A class set-aside of the item or service has been made by another contracting activity.—
- (h) A "brand name or equal" product description will be used in the solicitation.

19.504 Setting aside a class of acquisitions.-

- (a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in 19.503–1, 19.503–3, or 19.503–4. The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen.—
- (b) The determination to set aside a class of acquisitions may be either unilateral or joint.—
- (c) Each class small business set-aside determination shall be in writing and must—–
- (1) Specifically identify the product(s) and service(s) it covers;—
- (2) Provide that the set-aside does not apply to any acquisition of \$100,000 or less:
- (3) Provide that the set-aside applies only to the (named) contracting office(s) making the determination; –
- (4) Provide that the set-aside does not apply to any individual acquisition if the requirement is not severable into two or more economic production runs or reasonable lots, in the case of a partial class set-aside; and—
- (5) Provide that the procurement was not previously set aside for small disadvantaged business by the (named) contracting office(s).—
- (d) The contracting officer shall review each individual acquisition arising under a class set-aside to identify any changes in the magnitude of requirements, specifications, delivery requirements, or competitive market conditions that have occurred since the initial approval of the class set-aside. If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to

satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (if one is assigned), stating the reasons.

19.505 Rejecting Small Business Administration recommendations.—

- (a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 workdays of the contracting officer's receipt of the recommendation.—
- (b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 workdays after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 workdays. Pending issuing the decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.—
- (c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—
- (1) Within 1 workday, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and—
- (2) The SBA shall be allowed 15 workdays after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.—
- (d) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.—
- (e) The agency head shall reply to the SBA within 30 workdays after receiving