small disadvantaged business concerns shall be considered nonresponsive and will be rejected.

- (2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.
- (c) Agreement. A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small disadvantaged business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (Date). When the acquisition is for a product in a class for which the contracting officer has determined that there are no small disadvantaged business manufacturers or processors in accordance with 19.503–2(c), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Agreement. A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

73. Section 52.220–1 is redesignated as 52.219–01 and revised to read as follows:

## 52.219-01 Priority for Labor Surplus Area Concerns.

As prescribed in 19.304(b), insert the following provision:

### Priority for Labor Surplus Area Concerns (Date)

(a) The offeror's status as a labor surplus area concern may affect entitlement to award in case of tie offers. In order to determine whether the offeror is entitled to a priority, the offeror must identify, below, the LSA in which the costs to be incurred on account of manufacturing or production (by the offeror or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(b) Failure to identify the labor surplus areas as specified above will preclude the offeror from receiving priority consideration. If the offeror is awarded a contract as a result of receiving priority consideration under this clause and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

74. Section 52.219–02 is added to read as follows:

# 52.219–02 Notice of Evaluation Preference for Small Disadvantaged Business Concerns.

As prescribed in 19.1103, insert the following clause:

## Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Date)

- (a) Definition—Small disadvantaged business concern, as used in this clause, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.
- (b) Evaluation preference—(1) Offers will be evaluated by adding a factor of ten percent to the price of all offers, except—
- (i) Offers from small disadvantaged business concerns, which have not waived the preference;
- (ii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded;
- (iii) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.
- (2) The ten percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the ten percent factor. The ten percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than ten percent.
- (c) Waiver of evaluation preference. A small disadvantaged business may elect to waive the preference, in which case the ten percent factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) do not apply to offers which waive the preference.

\_\_\_\_\_ Offeror elects to waive the preference.

- (d) Agreements—(1) A small disadvantaged business concern which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—
- (i) Services, except construction, at least 50 percent of the cost of personnel for contract

- performance will be spent for employees of the concern.–
- (ii) Supplies, at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern.
- (iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.
- (iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.
- (2) A small disadvantaged business submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns.

Alternate I (Date). When the acquisition is for a product in a class for which the contracting officer has determined that there are no small disadvantaged business manufacturers or processors in accordance with 19.503–2(c), substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

#### 52.220-1 [Redesignated]

#### 52.220-2, 52.220-3, and 52.220-4 [Removed and reserved]

75. Sections 52.220–2, 52.220–3, and 52.220–4 are removed and reserved.

#### PART 53—FORMS

76. Section 53.219 is revised to read as follows:

#### 53.219 Small business programs.

The following standard forms are prescribed for use in reporting small, small disadvantaged and women-owned small business subcontracting data, as specified in part 19:

- (a) SF 294 (REV XX), Subcontracting Report for Individual Contracts. (See 19.704(a)(5).)
- (b) SF 295 (REV XX), Summary Subcontract Report. (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the loose-leaf edition of the FAR.
- 77. Sections 53.301–294 and 53.301–295 are revised to read as follows:

## 53.301–294 Subcontracting Reporting for Individual Contracts.

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