

- 19.503-6 Insufficient causes for not setting aside an acquisition.
- 19.504 Setting aside a class of acquisitions.
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**§ 19.501 General.—**

(a) The purpose of set-asides is to award certain acquisitions exclusively to small business or small disadvantaged business concerns. Under a "small business set-aside", competition is limited to small business concerns. Under a "small disadvantaged business set-aside", competition is limited to small disadvantaged business concerns. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial.—

(b) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the Small Business Administration (SBA) procurement center representative and concurred in by the contracting officer.—

(c) The contracting officer shall review acquisitions to determine if they can be set aside, giving consideration to the recommendations of agency personnel having cognizance of the agency's small business programs and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs. Automated contracting systems are not exempt from the requirements of this subpart.—

(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representatives security clearance) all proposed acquisitions in excess of the micro-purchase limitation in 13.106 that have not been unilaterally set aside.—

(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.—

(f) All solicitations involving set-asides must specify the applicable small business size standard and product classification (see 19.303).—

(g) Except as authorized by law, a contract may not be awarded as a result of a set-aside if the cost to the awarding agency exceeds the fair market price.—

(h) Section 305 of Public Law 103-403 authorizes public and private organizations for the handicapped to participate for fiscal year 1995 in acquisitions set-aside for small business concerns. Status as a small business concern is not accorded a public or private organization for the handicapped for the purposes of other preferential provisions available to small business concerns; *e.g.*, eligibility for certificates of competency or higher progress payment rates.—

(1) The contracting officer shall rely on the offeror's self-certification in a specific bid or proposal that it is a public or private organization for the handicapped unless another offeror or interested party files a protest. An interested party may file a protest challenging an offeror's self-certification by forwarding the protest to the contracting officer by close of business on the fifth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any protest, whether timely or untimely, the contracting officer shall promptly forward the protest and its supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration. Upon receipt of a protest, the SBA will notify the contracting officer and the protester of the date it was received, and that the status of the public or private organization for the handicapped being challenged is under consideration by the SBA. Within 10 working days after receiving a protest, the SBA will determine the eligibility of the public or private organization for the handicapped and notify the contracting officer, the protester, and the challenged offeror of its decision by certified mail, return receipt requested. The determination of the Associate Administrator for Procurement Assistance, SBA, is final. Award will be made based on this determination. After receiving a protest involving the status of a public or private organization for the handicapped, the contracting officer shall not award the contract until (i) the SBA has made a status determination or (ii) 10 working days have expired since SBA's receipt of a protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.—

(2) Any small business offeror which experiences or is likely to experience severe economic injury as a result of award to a public or private organization for the handicapped may file an appeal of the award with the contracting officer. The appeal must be received by close of business on the tenth working day after bid opening or receipt of the 15.1001(b)(2) notice from the contracting officer of the apparently successful offeror. Upon receipt of any appeal, whether timely or untimely, or whether received before or after award, the contracting officer shall forward the appeal and supporting documentation directly to the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision shall be final. The contracting officer should, when practical, withhold award until expiration of the 10-day appeal period, or; when an appeal is filed, withhold award until the contracting officer receives the SBA determination of appeal, unless delay would be disadvantageous to the Government. The SBA shall notify the contracting officer of the SBA determination and advise the agency or department to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

**19.502 Set-aside program order of precedence.—**

(a) In carrying out set-aside programs, contracting officers shall award contracts in the following order of precedence:—

(1) A total set-aside for small disadvantaged business concerns.

(2) A total set-aside for small business concerns.

(3) A partial set-aside for small business concerns.

(b) Set-aside priorities of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard are set forth in the respective agency FAR Supplements.

**19.503 Setting aside acquisitions.**

**19.503-1 Requirements for setting aside acquisitions.**

Using the order of precedence in 19.502, the contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.503-2, 19.503-3, or 19.503-4 exist. This