



SESSION GUIDE
SEASON 2023, EPISODE 13
FAR PARTS 19 & 26:
SMALL BUSINESSES AND OTHER SPECIAL
CONCERNS

I. Introduction

In this chapter, we come to our first look at how the U.S. Government utilizes acquisition policies to support “socioeconomic programs.” More specifically, this chapter addresses **FAR Parts 19 and 26** acquisition processes, which support and promote the use of small businesses and “other socioeconomic programs.”

Until now, we have mostly looked at big-picture government contracting issues, like how competition works. **Parts 19 and 26** focus on specific areas of government contracting. However, the fact that these areas are narrower than, say, RFP requirements, does not mean that they are less important! In fact, quite the opposite. The policy objectives we will discuss in this chapter, and the actions needed to address them, apply to nearly every Government procurement. Indeed, **19.201(a)** notes that the Government must provide “maximum practicable opportunities” to small businesses—both prime and sub—in every acquisition. The same “maximum practicable opportunities” language also appears throughout **Part 26** in relation to the special socioeconomic concerns that it addresses.

Now that we’ve established the fundamentals of this chapter’s subject matter, let’s move into the specifics of these special contracting concerns. We will start our discussion in **Part 19**, which, as we noted, deals with small businesses and businesses controlled by people in certain socioeconomic categories. We will then finish our discussion in **Part 26**, which deals with other socioeconomic categories such as Indian-owned businesses and Historically Black Colleges and Universities.

II. Small Business Programs

If you asked ten different people off the street what a “small business” is, you would probably get ten different answers. Is it a mom-and-pop owned convenience store on a military base? An IT firm with 40 employees? A gold mining company with 1200 employees? Who determines what makes a business “small,” anyway?

In government contracting, each of these businesses would actually be considered “small businesses.” **19.101(a)(1)** tells us that the Small Business Administration, or SBA, sets the standards used to determine whether a business is “small” for the purposes of government contracting. Note that the standards vary from industry to industry; some industry size standards (generally for service companies) are governed by the amount of average annual receipts, whereas others (generally for product companies) are governed by average annual number of employees. The standards vary even more from there, too. For example, a turkey farm is considered a small business only if its average annual receipts

do not exceed \$750,000, but a direct life insurance provider is considered a small business as long as its average annual receipts do not exceed \$38.5 million. Similarly, a newspaper publisher is considered a small business if its average annual number of employees does not exceed 1000, but a coal wholesaler's average annual number of employees cannot exceed 100 for it to be considered a small business. We can find all the size standards on the SBA website, which releases a [Small Business Size Standards Table](#) every year. We can also find a rundown of how the SBA categorizes small businesses in **Subpart 19.102**.

A. Types of Small Businesses

Before we get too far into the policies and procedures surrounding small business contracting issues, we should first identify the specific types of “small businesses” discussed in **FAR Part 19**.

Question 1 – Identify the eight categories of small business concerns included in **Part 19**.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

Each of these concerns has its own protest process, size standards, and other requirements. We will touch on these issues briefly later in this chapter.

B. Small Business Contracting Policies

Contracting Officers (“COs”) must make “every reasonable effort” to find as many small businesses as possible before issuing a solicitation, or else they have not fulfilled the obligations in **19.202-2**. When issuing solicitations for which small businesses are eligible to compete, COs must comply with the **Part 5** publicizing requirements and properly utilize, when appropriate, **FAR Parts 8, 12, 13, 14, or 15** acquisition procedures during evaluation and award.

Not every procurement is going to be a good fit for small businesses. Some procurements are simply too large or complex for one small business to handle. **19.202-1(a)** requires agencies, when applicable, to break down most procurements into multiple small business-sized pieces, as long as doing so would not be economically unfeasible or run counter to the agency's stated goals. Note that the stated goal of breaking down a procurement is to encourage competition amongst multiple small business concerns and not to slow down the procurement so one small business can take over all of it! When it would be impractical or illegal to break down a procurement in this way, **19.202-1(d)** tells us that agencies must encourage large prime contractors to subcontract with small businesses.

Question 2 – Contracting officers are required to encourage maximum response to solicitations from small businesses and small disadvantaged businesses. Name three steps that the FAR Council suggests to use to ensure such a response. **[Hint: Check out FAR 19.202-4]**

19.202-5 requires agencies to collect data on the small businesses with which they contract. The goal of this requirement is to help agencies keep an eye on how well they stack up against their internal small business contracting goals. Agencies must collect two main pieces of data: type of small businesses, and extent of small business participation. To this end, contractors must specify exactly which type of small business they are; **19.202-5(a)** contains a list of business types for this purpose. Agencies measure the extent of small business participation by evaluating the total value of contracts awarded to small businesses during the fiscal year. Then, at the end of the fiscal year, agencies report that amount to the SBA, and get a grade on the SBA “report card.” **19.202-5(b)**.

C. Determination of Small Business Status

Per **19.301-1(b)**, COs *shall accept* an offerors’ self-certification of their small business status. Wait, what? Yes, you read that right. Offerors are responsible for figuring out if they are actually small businesses, using **Subpart 19.1** and the SBA guidelines, and are permitted to self-certify. COs are obliged to accept the offeror’s representation unless they have a reason to question that representation. You will not be surprised to learn, however, that offerors that are dishonest—or simply mistaken—about their size status can be at significant risk. An erroneous certification can lead to default termination of the contract, suspension, and debarment (if intentional), or even a False Claims Act proceeding.

19.301-1(b)(1) permits COs to investigate an offeror’s size status if another offeror or interested party challenges the representation. **19.301-1(b)(2)** permits COs to investigate a size status representation if the CO has reason to question the representation. In other words, COs may not automatically investigate every size status representation; they must have a reason to do so.

If a CO learns or believes that a claim of small business size status may be questionable, the CO refers the investigation to the SBA. The SBA then investigates the offeror’s claims using the protest process described at **19.302**. An offeror’s representation of its size status is *not* binding on the SBA; if the SBA finds that a business has incorrectly represented itself, whether by mistake or intention, the SBA can

declare that business “other than small.” The SBA will never call a business a “large business;” for the purposes of **Part 19**, the only two business sizes are “small” and “other than small.” No matter the SBA’s determination, though, it will be binding on the CO, regardless of the CO’s thoughts on the issue.

What happens if a contractor’s size status changes at some point during the procurement? In that case, the contractor must “re-represent” its size status. Often this happens because of a novation, merger or acquisition. These three terms essentially mean the contract has been transferred (“novated”) to the contractor’s “successor in interest,” or the contractor has purchased (or been purchased by or merged with) another company.

Under the SBA’s affiliation rules, the contractor and its merger or acquisition “partner” are considered affiliates, which may materially change the contractor’s size qualifications. Regardless of how the process worked mechanically, contractors must re-represent their size status to the Government within 30 days of: (a) the execution of the novation agreement (if one is required); (b) the Sale of Asset Agreement (if novation is not required); and (c) a contract modification to include the clause at **52.219-28**. We should note, though, that the deadline is longer for “long-term contracts.” “Long-term contracts” are those for longer than five years, according to **19.301-2(a)**. The deadline for those contracts is in **19.301-2(b)(3)**. Once the Government receives the re-representation, the CO must enter it into SAM within 30 days of receipt.

Question 3 – True or False? A re-representation of size for a task order affects a contractor’s size status for purposes of the underlying ID/IQ contract. Explain your answer. [Hint: Check out FAR 19.301-2]

D. Protesting Size Status

As we mentioned earlier, sometimes a business will incorrectly represent itself as a small business. If someone suspects this has happened, they can file a protest.

Question 4 – Who can file a protest regarding a small business representation in a competitive small business contract? [Hint: check out 19.302]

Protesters lodge their protests with the CO, and may do so orally or in writing. Once the CO receives the protest, or if she wishes to file her own protest, she must promptly forward it in writing—regardless of how it originated and whether it is timely—to the SBA Government Contracting Office for adjudication.

19.302(c)(2). COs can't just forward the protest to any old SBA office; the office must be the one for the geographical area where the principal office of the challenged concern is located.

Protests must contain specific, detailed evidence supporting the allegation that a business has incorrectly represented itself as a small business. The SBA will dismiss any protest that does not meet this standard. **19.302(c)(2).** Additionally, a protest must be filed in a timely manner if it is to affect the current solicitation. The timeliness regulations for protesting with the SBA are in **13 C.F.R. §121.1004.** We should also note that a CO's protest with the SBA is *always* considered timely, whether it is filed before or after award, as is the SBA's own protest—unless the protest is filed before bid opening in a sealed bidding procurement, in which case it will be considered premature. **19.302(d)(2)** and **19.302(d)(4).**

Question 5 – Under what circumstance is a party permitted to file an “oral” protest of a small business representation? [Hint: Check out **FAR 19.302**]

Once the SBA receives the protest, it must notify the CO and protester of the date it received the protest, and that it is considering the size of the concern that has been challenged. Additionally, the SBA must provide a copy of the protest, as well as an Application for Small Business Determination (SBA Form 355), to the challenged concern. **19.302(e).** This is a basic due process requirement. The SBA will generally make a final determination regarding the challenged concern within 15 business days of receipt of the original protest. **19.302(f)(1).** If any party, be it the challenged concern or the protester, fails or refuses to submit required information, the SBA may assume that disclosure of the required information would be contrary to that party's interests. **13 C.F.R. §121.1009(d).** If the SBA does not make a determination within the 15-day timeframe, and if the CO has determined in writing that it is in the public interest to award the contract as soon as possible, the CO is permitted to award the contract to the challenged concern. **19.302(g)(1).**

But what if somebody appeals the SBA's decision? This can certainly happen. Any of the original parties to the protest, as well as any party that is adversely affected by the SBA's decision, may appeal the SBA's decision to the SBA's Office of Hearings and Appeals (OHA) in Washington, D.C. **19.302(h).** These appeals may be filed before or after contract award; if they are filed after contract award, the CO should consider suspending contract performance until the appeal is complete. Any of a number of situations can occur after an appeal. Each situation is explained in **19.302(h) and (j).**

E. NAICS Codes

Remember how we said different types of businesses have different size standards? NAICS codes are the way we determine what box each procurement fits in, and thus what size standard applies. NAICS stands for “North American Industrial Classification System,” and is a set of codes and associated size standards

that is uniform across the entire Government. Use of the NAICS codes makes sense because it is the SBA which ultimately has say over a business's size status. If every agency had different size standards for "small businesses," it would be extremely time-consuming and inefficient for contractors as well as for the SBA.

COs must determine which NAICS code applies to each procurement above the micro-purchase threshold, and their determinations are final unless appealed. **19.102(b) and (c)**. Interested parties may appeal the determination within ten *calendar* days of the issuance of the solicitation, using the procedures in **19.303(c)**. We should note, though, that the SBA itself may appeal a CO's determination at any point before offers are due under the solicitation. **19.303(c)(1)**.

For the purposes of size standards, the CO will generally use the NAICS code for whatever activity is the primary goal of the contract. For example, if the main point of a contract is to install new windows in an office building, but a portion of the contract price will end up including the cost of the windows themselves, a CO will typically still use the NAICS code for the installation services. **19.303(a)(2)**.

However, if a contract requires multiple different types of goods or services that would fall under multiple NAICS codes, then the CO will use several different NAICS codes. **19.303(b)**. For example, if that contract for window installation also requires security system services, the CO might include a different NAICS code for the security system portion, since window installation and security system services fall under two very different NAICS codes (238150 and 561621, respectively) and have very different size standards (\$15 million and \$20.5 million, respectively).

Question 6 – There will be a significant change in the way contracting officers assign a NAICS code for a multiple award contract. On what date will this change take effect? [Hint: Check out: **FAR 109.102**]

F. Small Business Set-Asides

Sometimes COs set a procurement aside for small businesses. These "set-asides" can be total or partial—that is, the CO can allow only small businesses to compete for the entire procurement, or for just a portion of the procurement. For example, a multiple-award IDIQ task order contract can have different tracks for "full and open competition" and "small business." Only small business would be eligible for a small business track award, while all responsible companies (which could include small business offerors as well) would be eligible for "full and open" awards. **19.501(a)**. Set-asides may also be unilateral or joint. A unilateral set-aside is when a CO decides on his own that a procurement is appropriate for restriction to small businesses only. A joint set-aside is when the SBA procurement center representative recommends a set-aside and the CO concurs. **19.501(b)**. Additionally, a set-aside can be open to any small business, or it can be open to only one specific category of small businesses, such as HUBZone businesses.

When determining whether any set-aside is appropriate, the CO should consider recommendations of other agency personnel who have knowledge of the agency's small business programs. The CO should also perform market research and document why a set-aside is or is not appropriate. **19.501(c)**. The CO should make that documentation available for review at the SBA's request when the CO unilaterally determines that any procurement above the micro-purchase threshold *is not* suitable for a set-aside. **19.501(d)**. Note that COs may not award contracts for an amount higher than the fair market price, unless such action is specifically authorized by law. **19.501(g)**. The Government wants to encourage small business participation, but not at the expense of fair market pricing!

There are several methods a CO can use in a set-aside. Total set-asides may use the simplified acquisitions procedures in **Part 13**, the sealed bidding procedures in **Part 14**, or the competitive procedures in **Part 15**. Partial set-asides may use either **Part 14** or **Part 15** procedures. **19.502-5**. Additionally, COs *may* totally set aside one or more contract awards, or orders under a contract, when conducting multiple-award procurements. They may also partially set aside a portion (or several portions) of one of the contract awards. **19.502-4**.

Question 7 – Certain acquisitions are automatically reserved as *total small business set-asides*. What acquisitions are these? [Hint: check out **19.502-2**]

Question 8 – What are the five issues a CO should consider when determining whether to use a *partial small business set-aside*? [Hint: check out **19.502-3**]

G. Small Business Subcontracting Program

As we have noted, a fairly large segment of procurements are not suitable for performance by a small business. However, many contracts in this category are suitable for small business subcontracting. If that is the case, and if the total value of the solicitation will likely exceed \$700,000 (or \$1.5 million for construction) and has subcontracting possibilities, the prime contractor must craft a subcontracting

plan, requiring the approval of the CO. **19.702**. This requirement applies to both negotiated and sealed bidding acquisitions. **19.702(a)**. Any contractor that fails to comply in good faith with its subcontracting plan requirements is subject to imposition of liquidated damages. **19.705-7(a)**.

Question 9 – All small business subcontracting plans are required to include fifteen specific items. Name 5 of them. [Hint: Check out **FAR 19.704**]

Who is eligible to be a subcontractor in this program? As you might expect, it is only open to small businesses. Businesses that fall into any of the categories we have discussed above—except 8(a) business development program participants, which are already technically on the list under the umbrella of “small disadvantaged businesses”—are eligible. **19.703(a)**. Other socioeconomic concerns, which we will discuss later in this chapter, are also eligible. **19.703(c)**. Small businesses wishing to participate in the program must submit a written representation of their small business status to the prime contractor, and the prime contractor may in good faith rely on that written certification. **19.703(b) and (c)(2)**.

Subpart 19.704 details the specific issues a subcontracting plan must cover, and **19.705** details the CO’s responsibilities with respect to subcontracting plan development and approval. **19.706** indicates the ACO’s responsibilities—which are different from those of the PCO!—and **19.707** describes the role of the SBA in subcontracting plans. **19.708** tells Cos which contract clauses to use when developing solicitations which would require a subcontracting plan.

A. A Quick Note About the 8(a) Program

Before we leave **Part 19**, we should take a brief look at the 8(a) program, since it is so different from the other small business programs. The SBA entirely administers and oversees the 8(a) program, so other agencies have no say in which small businesses may participate in it. **19.802**. When another agency wants to use the 8(a) program, it actually contracts directly with the SBA, which then subcontracts with one of the “8(a) contractors” in the program. **19.800(a)**. If the SBA approves the request, it becomes the prime contractor and opens bidding to eligible 8(a) contractors using the procedures in **19.804** or **19.805**, depending on the situation. Note that SBA provides 8(a) companies with other types of support, beyond specific contracting opportunities. This information can be found in the SBA regulations, but is not part of the FAR.

Question 10 – What are the three ways in which an 8(a) contract can be initiated? [Hint: check out **FAR 19.803**]

III. Other Socioeconomic Concerns

As we noted in Chapter 1 of this Workbook, one of the FAR’s Guiding Principles is to support public policy; like supporting historically disadvantaged businesses. In keeping with this desire, **Part 26** incorporates several special concerns into the procurement processes. This Part specifically includes the Indian Incentive Program (**26.1**), Disaster or Emergency Assistance Activities (**26.2**), Historically Black Colleges and Universities and Minority Institutions (**26.3**), and Food Donations to Nonprofit Organizations (**26.4**).

A. Indian (Native American) Incentive Program

The Indian Incentive Program incentivizes prime contractors to use Indian-owned and -operated businesses as subcontractors. **26.100**. For the purposes of the FAR, “Indian” means any person who is a member of a federally-recognized tribe, band, group, pueblo, or community which is eligible for services from the Bureau of Indian Affairs (BIA), and “Native” means any person who is a member of an Alaskan Native community as defined in the Alaska Native Claims Settlement Act, which we find in **43 U.S.C. 1601**. COs and prime contractors may rely in good faith on the representation of an Indian organization

that it is, in fact, an Indian organization; if there is cause for questioning this representation, the CO shall refer the matter to the BIA for resolution. **26.103.**

Question 11 – What incentive does the Government provide to nudge prime contractors toward subcontracting with Indian organizations? [Hint: check out **26.102**]

B. Disaster or Emergency Assistance Activities

Subpart 26.2 indicates the Government’s preference for using local businesses for emergency or disaster assistance activities. If you think it sounds just like the guidance we discussed in the last chapter, you are correct! This policy has two benefits. First, local businesses are likely to be familiar with the local situation and will not require a steep learning curve to perform. Second, the mere fact of using a local business can be part of the solution, because it puts funds into the disaster area.

COs are permitted to set aside emergency procurements for businesses that are local to the geographic area in which an emergency or disaster has occurred or will likely occur. **26.202-1.** COs must define the specific geographic area for the set-aside. **26.202-1(a).** Such set-asides need not include every single county or other principality in the affected area, but may not extend outside the area. **26.202-1(b).** COs may also restrict these set-asides to small businesses in the area. **26.202-1(c).** If a CO wishes to contract with a non-local business in an emergency response situation, the CO must create a justification for such action in writing. **26.204.**

COs may enter into emergency response contracts in anticipation of a disaster or other emergency; in fact, they are encouraged to do so, so the emergency response can be as speedy as possible. **26.203(a).** Additionally, COs must transition work to local firms on the date the President declares a major disaster or emergency, unless the head of the agency determines in writing that such action is not feasible or practicable. **26.203(b).** Note that agencies are not required to terminate existing contracts; only to transition them at the “earliest practical time.”

C. Historically Black Colleges and Universities and Minority Institutions

Subpart 26.3 promotes participation of Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) in federal procurement. **26.302.** Agencies must periodically report their efforts to promote HBCU and MI participation to the President in line with E.O. 12928. **26.303.**

D. Food Donations to Nonprofit Organizations

Subpart 26.4 encourages agencies and contractors to donate excess food to nonprofits that provide food to food-insecure populations in the US, to the maximum extent safe and practicable. **26.402.** Note that these nonprofits must be designated as 501(c) and tax-exempt under 501(a) pursuant to the IRS Tax Code. **26.401.** Excess food is simply food that would otherwise be thrown out and is not required to

meet the needs of the agency; food-insecure populations are populations that have inconsistent access to sufficient, safe, nutritious food. **26.401**. Naturally, donated food must be “apparently wholesome,” so it cannot be spoiled, and it must comply with all applicable FDA requirements, although it need not look aesthetically perfect. **26.401**. **26.403** details the specific procedures agencies and contractors should use when donating food.

Question 12 – Can agencies reimburse contractors for food donation-related costs? Explain your answer. [Hint: check out **26.403(a)(2)**]

Discussion Questions

1. **FAR 2.101** notes that, to be determined a “small business concern,” a business may not be “dominant” in its field of operation. What factors does the FAR say should be assessed to determine if a business has or has not established such “dominance?”

2. FAR Part 19 addresses eight (8) specific socioeconomic programs. What three things must a contracting officer take into consideration in determining which program to use for an acquisition? [Hint: check out **19.203**]

3. Identify what, if any, subcontract limitations exist under small business set-aside contracts for (i) goods, (ii) services, and (iii) construction. [Hint: check out **19.508(e)** and **52.219-14**]

4. Under what circumstances is a contracting officer permitted to question a contractor's small business size representation? **[Hint: Check out 19.301-1].**

5. Question – Must a CO terminate a contract if OHA makes a post-award determination that a business is not, in fact, small? Explain your answer.

6. Question – Subcontracting plans are not required in four specific situations. What are those situations? [Hint: check out 19.702(b)]

7. True or False? A prime contractor who is subject to a small business subcontracting plan is prohibited from including in its subcontracts with small business that prevents the small business from speaking with the contracting officer about payment or utilization of the subcontractor. Explain your answer. [Hint: check out **19.704**]

8. How is the amount of liquidated damages a contractor owes for failure to comply with its subcontracting plan determined? [Hint: Check out **FAR 19.705-7**]

9. Where in **FAR Part 26** can you find guidance regarding the acquisition of goods and services through what is known as a “local area set aside program”? Where else can you find this type of guidance in the FAR?

10. **FAR Question:** When were the “caps” on contract amounts removed from the Women-Owned Small Business Program? (Hint: Take a look at the original resources found in the Appendix!)

Answer Key

Answer 1 –

1. General small business
2. Small Disadvantaged Business (SDB)
3. Historically Underutilized Business Zone (HUBZone)
4. Veteran-Owned Small Business (VOSB)
5. Service-Disabled Veteran-Owned Small Business (SDVOSB)
6. Women-Owned Small Business (WOSB)
7. Economically Disadvantaged Women-Owned Small Business (EDWOSB)
8. 8(a) business development program

Answer 2 –

- 1) Allow the maximum amount of time practicable for the submission of offers
- 2) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined
- 3) Provide to any small business concern, upon its request, a copy of solicitations with respect to any contract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business must comply when doing business with other than the Government

Answer 3 – False; per FAR 19.301(d)(2)(ii), a re-representation for a task order does not change the size or socioeconomic status representation for the contract.

Answer 4 – An offeror, the contracting officer, SBA, or another interested party may protest the small business representation of an offeror in a specific offer for a contract. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA.

Answer 5 – A protest may be made orally if it is confirmed in writing and received by the contracting officer within the 5-day period or by letter postmarked no later than 1 business day after the oral protest.

Answer 6 – The way the Government will assign a NAICS code to a procurement will change on October 1, 2022

Answer 7 – The contracting officer shall set aside any acquisition over the simplified acquisition threshold for small business participation when there is a reasonable expectation that-

- (1) Offers will be obtained from at least two responsible small business concerns; and

(2) Award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists.

Answer 8 –

(1) Market research indicates that a total set-aside is not appropriate (see 19.502-2);

(2) The requirement can be divided into distinct portions;

(3) The acquisition is not subject to simplified acquisition procedures;

(4) Two or more responsible small business concerns are reasonably expected to submit offers on the set-aside portion or portions of the acquisition that are competitive in terms of fair market prices, quality, and delivery;

(5) The specific program eligibility requirements identified in this part apply; and

(6) The solicitation will result in a contract other than a multiple-award contract

Answer 9 –

1) Separate percentage goals for using small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns as subcontractors;

2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns, as a percentage of total subcontract dollars. For individual subcontracting plans only, a contracting officer may require the goals referenced in paragraph (a)(1) of this section to be calculated as a percentage of total contract dollars, in addition to the goals established as a percentage of total subcontract dollars;

3) A description of the principal types of supplies and services to be subcontracted and an identification of types of supplies or services planned for subcontracting to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

4) A description of the method used to develop the subcontracting goals;

5) A description of the method used to identify potential sources for solicitation purposes

Answer 10 –

1) The SBA advises the contracting activity of an 8(a) participant's capabilities through a search letter and requests the contracting activity to identify acquisitions to support the participant's business plans

2) The SBA identifies a specific requirement for one or more 8(a) participant(s) and sends a requirements letter to the agency's Office of Small and Disadvantaged Business Utilization, or for the Department of Defense, Office of Small Business Programs, requesting the contracting office offer the acquisition to the 8(a) program

3) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) participant, identify a requirement for the 8(a) program, they may offer on behalf of a specific 8(a) participant, for the 8(a) program in general, or for 8(a) competition

Answer 11 – The Indian Incentive Program allows an incentive payment equal to 5 percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.

Answer 12 – No; the head of the executive agency under which food is donated to food-insecure people in the United States shall not assume responsibility for the costs and logistics

Discussion Questions Answer Key

1. A small business concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
2.
 - 1) If a requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless the SBA agrees to its release in accordance with 13 CFR parts 124, 125, and 126
 - 2) Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency’s requirement
 - 3) Agency progress in fulfilling its small business goals
3.
 - 1) Services (except construction): at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the small business concern
 - 2) Supplies (other than procurement from a non-manufacturer of such supplies): the small business concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials
 - 3) General construction: the small business concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees
 - 4) Construction by special trade contractors: the small business concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees
4. The contracting officer shall accept an offeror’s representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the concern’s small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concern representation shall be referred to the Small Business Administration (SBA).
5. No; **FAR Part 19-302(j)** states: "When a concern is found to be other than small under a protest concerning a size status re-representation made in accordance with the clause at 52.219-28, Post-Award Small Business Program Re-representation, a contracting officer may permit contract performance to continue, issue orders, or exercise option(s), because the contract remains a valid contract."
6.
 - 1) From small business concerns
 - 2) For personal services contracts
 - 3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas

- 4) For modifications that are within the scope of the contract and the contract does not contain the clause at 52.219-8, Utilization of Small Business Concerns.
7. True; **FAR Part 19.704(a)(14)** states that "the contractor will not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to payment to or utilization of a subcontractor."
8. **FAR 19.705-7(b)**: The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal.
9. **FAR Part 26.202-1**; it is also found at **FAR Part 6.208**
10. May 7, 2013

APPENDIX

All of the following materials are linked and can be found via the Links Document or online.

[Small Business Size Standards Table](#)

[8\(a\) Partnership Agreement - DOD and SBA](#)

[GAO B-410179 Edmond Scientific Company](#)

[Government-Wide FY19 SB Procurement Scorecard](#)

[GSA Model Small Business Subcontracting Plan](#)

[SBA Certificate of Competency Overview](#)

[SBA Useful Government Contracting Websites](#)

[SBA WOSB Guide - Government](#)

[SBA WOSB Guide - Industry](#)

FUN WITH THE FAR
Episode 13
FAR Parts 19 & 26
Summary Outline

I. Introduction

II. FAR PART 19

A. General Observations

B. Small Business Contracting Policies

C. Determination of Small Business Status Determination and Protests of Size Status

D. Set-Asides

E. Certificates of Competency

F. Small Business Subcontracting Plans

G. SBA 8(a) Program

H. Overview of Disadvantaged Small Business Programs

III. FAR PART 26

A. General Observations

B. Types of Special Socioeconomic Concerns/Programs

1. Indian Incentive Program
2. Disaster or Emergency Assistance
3. Historical Black Colleges and Universities
4. Food Donations to Nonprofit Organizations

IV. Closing Remarks