

April 29, 1980

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

**Office of Federal Procurement Policy April 29, 1980
Policy Letter 80-2**

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Regulatory Guidance on Section 211 of Public Law 95- 507

There is a need in Government for uniformity and consistency in the application of procurement policy. This directive provides the uniform policy applicable to Section 211 of Public Law 95-507. The clauses and regulatory coverage that follow articulate this uniform policy. The Defense Acquisition Regulations (DAR), the Federal Procurement Regulations (FPR), and the National Aeronautics and Space Administration Procurement Regulations (NASA PR) shall be amended to conform to this policy. This guidance supercedes in its entirety the guidance previously published in the **Federal Register** on April 20, 1979, (44 F.R. 23610).

**A. UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED
BUSINESS CONCERNS (OVER \$10,000)**

The following clause shall be included in all contracts over \$10,000 except (1) contracts for services which are personal in nature and (2) contracts which will be performed entirely (including all subcontracts) outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico:

(Clause)

**UTILIZATION OF SMALL BUSINESS CONCERNS AND
SMALL BUSINESS CONCERNS OWNED AND CONTROLLED
BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS**

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Small Business Administration or the contracting agency which may be necessary to determine the extent of the contractor's compliance with this clause.

(c)

(1) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern -

(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals' or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) whose management and daily business operations are controlled by one or more of such individuals.

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of Clause)

B. DEFINITIONS

1. Business owners who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans) are to be considered socially and economically disadvantaged.
2. The phrase "Native Americans" means American Indians, Eskimos, Aleuts and native Hawaiians. The term "Asian-Pacific Americans" means U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia and Taiwan.
3. Other individuals may qualify as socially and economically disadvantages under procedures which have been separately established by the Small Business Administration at 13 CFR 124.1-1 (3)(iii).
4. The Office of Minority Small Business and Capital Ownership Development in the Small Business Administration has the final authority to determine the eligibility of a concern to be designated as a small disadvantaged business and shall answer inquiries from prime contractors and others regarding such eligibility.
5. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for

supplies or services required for the performance of the original contract or subcontract.

C. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUB-CONTRACTING (NEGOTIATED).

All solicitations for negotiated contracts or negotiated amendments or modifications (including contracts, amendments, and modifications placed on a sole source basis), except those for procurements and set-asides pursuant to section 8(a) and section 15 of the Small Business Act as amended, which individually are expected to exceed \$500,000, or in the case of contracts for the construction of any public facility, \$1,000,000, and are required to include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, shall include a provision which requires the apparent successful offeror, provided the offeror is not a small business concern, to negotiate a detailed subcontracting plan. The provision is as follows:

(Provision)

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (NEGOTIATED)

1. This provision does not apply to small business concerns.
2. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.
3. The offeror acknowledges that it is aware of the subcontracting plan requirements in this provision; and if it is the apparent successful offeror, and if the contract offers subcontracting possibilities, agrees to negotiate a plan which includes:
 - a. Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (For the purposes of the sub- contracting plan, the contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful offeror shall also include in its subcontracting plan:

- (1) A statement of: (a) total dollars planned to be subcontracted; (b) total dollars planned to be subcontracted to small business; and (c) total dollars planned to be subcontracted to small disadvantaged business.
- (2) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.
- (3) A statement of the method used in developing proposed subcontracting goals for

(i) small business, (ii) small disadvantaged business concerns (e.g., did the offeror use for subcontract solicitation purposes company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, the Office of Minority Business Data Center in the Department of Commerce, and the facilities of local small business and minority associations?).

(4) If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

b. The name of an individual within the employ of the offeror who will administer the subcontracting program of the offeror and a description of the duties of such individual;

c. A description of the efforts the offeror will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

d. Assurances that the offeror will include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals in all subcontracts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of \$500,000, or in the case of a contract for the construction of any public facility, \$1,000,000, to adopt and comply with a plan similar to the plan agreed to by the offeror. Such assurances shall describe the offeror's procedures for the review, approval, and monitoring for compliance with such plans;

e. Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the offeror with the subcontracting plan; and

f. A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

(1) Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors.

(2) Organizations contacted for small and disadvantaged business sources.

(3) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (a) whether small business was solicited, and if not why not; (b) whether small disadvantaged business was solicited, and if not

why not; and (c) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

(4) Records to support other outreach efforts:

- Contacts with minority and small business trade associations;
- Contacts with business development organizations;
- Attendance at small and minority business procurement conferences and trade fairs.

(5) Records to support internal activities to guide and encourage buyers:

- Workshops, seminars, training programs, etc.
- Monitoring activities to evaluate compliance.

(6) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

4. The offeror understands that:

a. No contract will be awarded unless and until an acceptable plan is negotiated with the contracting officer which plan will be incorporated into the contract, as a material part thereof.

b. An acceptable plan must, in the determination of the contracting officer, provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged persons to participate in the performance of the contract.

c. If a subcontracting plan acceptable to the contracting officer is not negotiated within the time limits prescribed by the contracting activity and such failure arises out of causes within the control and with the fault or negligence of the offeror, the offeror shall be ineligible for an award. The contracting officer shall notify the contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the contractor to modify the plan within the time limits prescribed.

d. Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the contracting officer in determining the responsibility of the offeror for award of the contract.

e. It is the offeror to develop a satisfactory subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the offeror's plan will be judged independently of the other.

f. The offeror will submit, as required by the contracting officer, subcontracting reports in

accordance with the instructions thereon, and as further directed by the contracting officer. Subcontractors will also submit these reports to the government's contracting officer or as otherwise directed, with a copy to the prime contractor's designated small and disadvantaged business liaison.

5. The failure of any contractor or subcontractor to comply in good faith with (a) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals or (b) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.
6. Commercial Products. If a commercial product (defined below) is offered the required subcontracting plan may relate to the company's production generally (both for commercial and non-commercial products) rather than solely to the item being procured under the government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the contracting officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the contracting officer, differs only insignificantly from the contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of Provision)

INSTRUCTIONS TO CONTRACTING OFFICERS

The following policy and procedural guidance is provided to contracting officers in making determinations as to the acceptability of a Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) submitted by an apparent successful offeror, in accordance with the requirements of Public Law 95-507, Amendments to the Small Business Act and the Small Business Investment Act of 1958. This guidance is not intended to be all inclusive. Other factors may warrant consideration dependent upon the particular circumstances of the proposed acquisition. Ultimately, there is no substitute for the reasoned and objective judgment of a contracting officer exercised on a case by case basis.

(a) **Contracts with Options or Similar Provisions** - In the case of contracts with options, or similar provisions, requiring a subcontracting plan, the contracting officer shall obtain a satisfactory plan prior to award covering the basic and the option items of the contract. The price of the option items shall be included in determining whether the contract meets the subcontracting threshold, and the plan shall take into account the procurement of the option items. In the event the option or similar provision is not exercised, the contractor should not be bound by that portion of the plan relating to the option items.

(b) **Letter Contracts** - In the case of letter-type contracts requiring a subcontracting plan, the contracting officer shall seek to obtain a satisfactory plan within 90 days after award or before definitization, whichever comes first.

(c) **Acceptability of Proposed Plan** - In making determinations concerning the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) To the extent available, the contracting officer shall obtain the names and locations of principal proposed (i) small business, and (ii) small disadvantaged business subcontractors, including the type of product or service and the dollar value thereof to be awarded to each principal subcontractor. (This information will be used only to assist the contracting officer in making a determination as to the acceptability of the proposed percentage and dollar subcontract goals. The offeror will not be contractually bound to make subcontract awards to the designated subcontractors nor will the names of the subcontractors be included in any subsequent approved plan).

(2) Obtain and review information from all appropriate sources, including the prospective contractor, contract administration activities, Small and Disadvantaged Business Utilization Specialist, and SBA representatives concerning the apparent successful offeror's historical performance and achievements in placing subcontracts for the same or similar products or services with (i) small business, and (ii) small disadvantaged business subcontractors -- if this information is not available for a specific product or service, the offeror's past performance and achievements in the placement of total subcontract awards to (i) small business, and (ii) small disadvantaged business subcontractors shall be examined.

(3) Evaluate the anticipated potential for subcontracting to (i) small business, and (ii) small disadvantaged business considering the make-or-buy policies or programs of the apparent successful offeror, the nature of the products or services to be subcontracted, and the known availability of (i) small business, and (ii) small disadvantaged business concerns in the geographical area where the work will be performed.

(4) Advise the apparent successful offeror of (i) the availability of the sources of information on potential small business and small disadvantaged business subcontractors and (ii) the names of any known potential small business and small disadvantaged business subcontract sources. If the proposed goals are questionable, the contracting officer shall emphasize that one or more of the sources of information should be used and potential small business and small disadvantaged business subcontract sources be considered to ensure development of realistic and acceptable goals.

(5) Obtain advice and recommendations of the Small and Disadvantaged Business Utilization Specialist and the assigned Small Business Administration Procurement Center Representative (if available) concerning the acceptability of the proposed plans.

(6) Negotiate subcontracting goals at a level which represents a good faith, aggressive, and comprehensive effort of the apparent successful offeror to use to the maximum practicable extent small and small disadvantaged subcontractors after appropriate consideration of their price, technical capability, and other pertinent factors. No goals will be negotiated upwards if it is apparent that such higher goals must result in significant increased costs to the Government or will seriously impede acquisition objectives. However, incentive subcontracting clauses should be considered in those cases where it is believed that additional and unique prime contractor effort could significantly increase small business and small disadvantaged business subcontract awards.

(7) The contracting officer shall promptly negotiate appropriate revisions to agreed

subcontracting percentage and dollar goals if any subsequent amendments to the contract will have a major impact on the original planned volume or type of subcontracting effort. If the agreement cannot be reached, the matter will be resolved under the Disputes Clause of the contract.

(8) In reviewing and negotiating a contractor's proposed small and disadvantaged business subcontracting plan, the contracting officer shall give due consideration to the contractor's "make-or-buy" policy or program. This is necessary to ensure that the respective programs are not in conflict, and the best interests of the Government are obtained. Furthermore, where the contract work involves products or services which are not generally available in the commercial marketplace or are particularly specialized, and the contractor has current capacity to perform the work, the contracting officer may recognize the reduced likelihood of subcontracting opportunities.

(d) Forwarding to SBA of Plans Involving Commercial Products

Contracting officers receiving company-wide plans under paragraph 6 (commercial products) of both solicitation clauses -- SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (NEGOTIATED) and SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (ADVERTISED) -- shall forward copies of such plans and approvals thereof to the Central Office of the Small Business Administration, 1441 "L" Street, N.W., Washington, D.C., Attention: AAPA.

(e) Failure to Comply in Good Faith with the Subcontracting Requirements

The failure of any contractor or subcontractor to comply in good faith with (1) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, or (2) an approved plan required by the Small Business and Small Disadvantaged Business Subcontracting Plan provision, will be a material breach of such contract or subcontract.

If such a breach has occurred in the prime contract, the contracting officer shall review the available facts to determine what remedy is in the best interests of the Government.

Such remedies may include Termination of the Contract pursuant to the Termination for Default Clause, negotiated reduction in contract price, negotiation of a revised subcontracting plan to correct deficiencies, or other negotiated measures the contracting officer may deem appropriate. In determining the proper remedy, the contracting officer shall consider as a minimum (1) the reasons attributed to the failure to comply in good faith, (2) the Government's need for the contract deliverables, and (3) the impact a proposed remedy may have on existing small and disadvantaged subcontractors.

If the failure to comply in good faith cannot be settled by agreement, a contracting officer decision pursuant to the contract disputes clause shall be issued.

D. INCENTIVE SUBCONTRACTING PROGRAM.

The following clause may be used in negotiated contracts for which a subcontracting plan is required.

(Clause)

**INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL BUSINESS
AND SMALL DISADVANTAGED BUSINESS (NEGOTIATED)**

(1) The contractor has established, in its subcontracting plan, the following goals for awards to small business and small disadvantaged business concerns:

(i) ____* percent of the total planned subcontract amount of \$ ____* to small business concerns, and

(ii) ____** percent of the total planned subcontract amount of \$ ____** to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) To the extent that the contractor exceeds such subcontract goals in the performance of this contract, it will receive ____*** percent (not to exceed 10 percent) of the dollar amount of such excesses, unless the contracting officer determines that such excess was not due to efforts by the contractor, i.e., subcontractor costs in excess of those contractually agreed upon or where the actual subcontract amount exceeds that estimated in the subcontract plan; or planned subcontracts which were not disclosed in the subcontract plan during contract negotiation.

(3) If the contract is a cost plus fixed fee type, the total of the fixed fee and the incentive payments made pursuant to this clause is subject to the limitations set forth in FPR 1-3.405-5(c)(2) and DAR 3-405.6(c)(2).

*, ** Identified elsewhere in the contract.

*** Exact percentage to be inserted into the contract document.

(End of Clause)

**E. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS
SUBCONTRACTING (ADVERTISED).**

All solicitations for formally advertised contracts or amendments or modifications thereto which, except those for procurements and set-asides pursuant to section 8(a) and section 15 of the Small Business Act as amended, offer subcontracting opportunities and are expected to exceed \$500,000, or in the case of contracts for the construction of any public facility, \$1,000,000, and are required to include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, shall include a provision which requires the bidder selected to be awarded the contract, provided the bidder is not a small business concern, to submit a detailed subcontracting plan.

The contracting officer shall include the solicitation notice below in all solicitations meeting the monetary threshold unless the contracting officer determines in writing that the proposed contract, amendment or modification, offers no subcontracting possibilities. If the contracting officer is not sure of the presence of subcontracting possibilities, the notice must be included; but the requirement to

furnish a plan may be omitted on a showing by the bidder selected for award that subcontracting possibilities do not exist.

The provision is as follows:

(Provision)

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS
SUBCONTRACTING PLAN (ADVERTISED)

1. This provision does not apply to small business concerns.
2. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.
3. The bidder acknowledges that it is aware of the subcontracting plan requirement in this provision; and if selected for award, will submit within the time specified by the contracting officer a subcontracting plan that will afford the maximum practicable opportunity to participate in the performance of the contract to small and small disadvantaged concerns, and will include:
 - a. Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (For the purposes of the subcontracting plan, the contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful bidder shall also include in its subcontracting plan:

 - (1) A statement of: (a) total dollars planned to be subcontracted; (b) total dollars planned to be subcontracted to small business; and (c) total dollars planned to be subcontracted to small disadvantaged business.
 - (2) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.
 - b. The name of an individual within the employ of the bidder who will administer the bidder's subcontracting program and a description of the duties of such individual;
 - c. A description of the efforts the bidder will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;
 - d. Assurances that the bidder will include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals in all subcontracts which offer further

subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of \$500,000, or in the case of a contract for the construction of any public facility, \$1,000,000, to adopt and comply with a plan similar to the plan agreed to by the bidder;

e. Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

f. A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

- (1) Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors.
- (2) Organizations contacted for small and disadvantaged business sources.
- (3) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (a) whether small business was solicited, and if not why not; (b) whether small disadvantaged business was solicited, and if not why not; and (c) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.
- (4) Records to support other outreach efforts:
 - Contacts with minority and small business trade associations,
 - Contacts with business development organizations,
 - Attendance at small and minority business procurement conferences and trade fairs.

4. The bidder understands that:

(a) It agrees to carry out the government's policy to provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract, consistent with its efficient performance.

(b) If it does not submit a subcontracting plan within the time limits prescribed by the contracting agency, it will be ineligible to be awarded the contract.

(c) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the contracting officer in determining the responsibility of

the offeror for award of the contract.

(d) It is the bidders responsibility to develop a subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the plan will be judged independently of the other.

5. The failure of any contractor or subcontractor to comply in good faith with (a) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals or (b) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.
6. Commercial Products. If a commercial product (defined below) is offered the required subcontracting plan may relate to the company's or division's production generally (both for commercial and non-commercial products) rather than solely to the item being procured under the government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the contracting officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the contracting officer, differs only insignificantly from the contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of Provision)

INSTRUCTIONS TO CONTRACTING OFFICERS

(a) **Informational Goals.** The contracting officer may, in a letter accompanying the solicitation or otherwise, inform the offeror of the goal the Government contemplates for subcontracting to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Any such letter shall state that the goals are informational only and not legally binding.

(b) **Notification of Unsatisfactory Plans.** If the contracting officer believes that the subcontracting plan submitted pursuant to this section does not reflect the best effort by the bidder to award subcontracts to small and small disadvantaged firms to the fullest extent consistent with the efficient performance of the contract, he shall notify the agency's director of the Office of Small and Disadvantaged Business Utilization who shall in turn notify the Small Business Administration and request a review of the plan pursuant to Section 8(d)(10) and (11) of the Small Business Act. Such request for an SBA review shall not delay award of the contract. Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the contracting officer in determining the responsibility of the bidder for award of the contract.

(c) **Forwarding to SBA of Plans Involving Commercial Products.** Contracting officers

receiving company-wide plans under paragraph 6 (commercial products) of both solicitation clauses -- SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (NEGOTIATED) and SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (ADVERTISED) -- shall forward copies of such plans and approvals thereof to the Central Office of the Small Business Administration, 1441 "L" Street, N.W., Washington, D.C., Attention: AAPA.

EFFECTIVE DATE: This Policy Letter is effective June 1, 1980.

CONCURRENCE: This Policy Letter has been concurred in by the Director of OMB.

Karen H. Williams
Administrator