

(d)(1) [After] the award [price] for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notices; provided that, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of 2-407.6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see 3-201.2(b)(i) as to negotiation).

(2) When the award price for a non-set-aside portion has been determined and where an award will be made to a labor surplus area concern and the same labor surplus area concern is entitled to receive a set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only. For purposes of 16-901.2, the non-set-aside and set-aside portions shall be reported separately.

1-804.3 Withdrawal of Set-Asides. If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, *e.g.*, because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

1-804.4 Contract Authority. Contracts for set-aside made under this Part 8 shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see 3-201.2(b)(i) for contracts awarded to labor surplus area concerns and 3-201.2(b)(ii) for contracts awarded to small business concerns which are not labor surplus area concerns.

1-805 Subcontracting With Labor Surplus Area Concerns.

1-805.1 General Policy. It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus, in the order to priority described in 1-802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

1-805.2 Labor Surplus Area Subcontracting Program. The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. In contracts which range from \$5,000 to \$500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 1-805.3 (a). In contracts which may exceed \$500,000, the contractor is required, pursuant to the clause set forth in 1-805.3(b) to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

1-805.3 Required Clauses.

(a) The "Utilization of Concerns in Labor Surplus Areas" clause set forth below shall be inserted in all contracts in amounts which may exceed \$5,000, except—

(1) contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico;

(2) contracts for services which are personal in nature; and

(3) contracts for construction.