

DEPARTMENTAL REGULATION		Number: 5090-1
SUBJECT: Clearance Process for Small Business Set-asides and Use of 8(a) Programs	DATE: November 13, 1997	
	OPI: Office of Small and Disadvantaged Business Utilization	

1 PURPOSE

This regulation prescribes policies, responsibilities and procedures for the Office of Small and Disadvantaged Business Utilization (OSDBU) clearance of contracts not set-aside for small business participation.

2 BACKGROUND AND REFERENCES

a 15 U.S.C. 644 (e) authorizes the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) to make recommendations as to whether a particular acquisition shall be awarded as a small business set-aside or under the Small Business Administration's (SBA) 8(a) program. The Secretary has appointed the Assistant Secretary for Administration (ASA) as the Director, The ASA has delegated this and other related responsibilities to the Director of OSDBU.

b 15 U.S.C. 644(a) establishes a detailed procurement review process involving the Small Business Administration's Procurement Center Representative (PCR) to ensure that the bundling of procurement requirements does not adversely impact small businesses. This review process is in addition to other PCR reviews prescribed in the Federal Acquisition Regulations.

3 POLICY

All proposed contract actions over the simplified acquisition threshold not set-aside for small business participation shall be submitted to the Office of Small and Disadvantage Business Utilization (OSDBU) for clearance.

The estimated cost of the contract shall include the cost of the base year and all option years, if any.

4. Exemptions

- a Contract requirements offered to Javits-Wagner-O=Day participants,
- b Requirements to be awarded pursuant to FAR 6.302-2 through FAR 6.302-6.
- c Requirements under the Empowerment Contracting Program are exempt from the small business clearance process,
- d Non 8(a) awards covered by the Small Business Competitive Demonstration Program (FAR 19.10), or
- e Delivery/task orders over \$100,000, when the order is being placed against a mandatory contract by organizations required to use the contract.
- f Delivery/task orders over \$100,000 when placed against a non-mandatory contract held by a small business.

5 WAIVER TO CLEARANCE PROCESS

Agencies that have met or exceeded all of prior year prime contract and subcontract small business goals, i.e. goals set for small business, small disadvantaged business, 8(a), and women-owned business, may request, in writing to the Director of OSDBU, a waiver to the small business clearance process. Waiver=s will be granted for one fiscal year and must be reapplied for annually.

6 RESPONSIBILITIES

a Heads of Contracting Activities (HCA)

Ensure that all non-exempt proposed contract actions over the simplified acquisition threshold not set-aside for small business are forwarded to the Director of OSDBU for concurrence.

b Contracting Officers

Shall document the appropriate contract file justifying a decision not to accept the recommendation of the Director of OSDBU, to set-aside a contract requirement for small business. A copy of this justification shall be provided to the Director of OSDBU.

c Small Business Coordinator

Shall review all non-exempt planned contract action strategies over the simplified acquisition threshold that are not set-aside for small business and recommend concurrence or non-concurrence with the proposed contract strategy.

d Director of OSDBU

Ensure that all documents received from the HCA for review and clearances are responded to within 10 **working** days of receipt.

7 PROCEDURE

For each contract requirement over the simplified acquisition threshold that has not been set-aside for small business, the following actions must take place prior to synopsis in the Commerce Business daily:

a Contracting Officers shall prepare the clearance sheet at Appendix AA@ and forward it with a copy of the statement of work and any other pertinent information used in making the final decision to the contracting activity's Small Business Coordinator for clearance.

b Small Business Coordinators shall review each action within 5 work days of receipt.

(1) If the contract strategy is changed to a small business or 8(a) set-aside, no further clearance action is required. Small Business Coordinators shall maintain a copy of each clearance action taken. These records will be reviewed annually by OSDBU to analyze buying practices within the agency and the Department.

(2) If non-concurrence with the proposed action is given or if the coordinator concurs with a strategy other than a set-aside for small business, the coordinator shall attach an explanation and forward to the Director of OSDBU for final clearance.

c The Director of OSDBU shall review each proposed action which is forwarded by a Small Business Coordinator and respond to the Contracting Officer within 10 work days of receipt.

(1) If concurrence with the proposed action is given, the clearance package will be cleared and returned to the Contracting Officer with no further action required by the contracting agency.

(2) If the Director of OSDBU does not concur with the set-aside aspects of the proposed contract strategy, a written set-aside recommendation, which includes prospective sources for the required supplies and/or services will be provided to the Contracting Officer for further consideration as described in paragraph d below.

(3) If the Director of OSDBU does not respond to the Contracting Officer within 10 working days of receipt of the clearance package, the Contracting Officer may proceed with the procurement.

d Once the Contracting Officer has received the clearance package from the OSDBU, the following actions shall be taken:

(1) If OSDBU concurred, continue the procurement action.

(2) IF OSDBU's recommendation was to set aside the acquisition aside for small business or 8(a) the contracting officer will take the following action:

(a) If the Contracting Officer concurs with the recommendation to set-aside, or to partially set-aside, synopsis release and subsequent procurement actions may proceed based on revised contract strategy.

(b) If the Contracting Officer does not concur with the recommendation of the Director of OSDBU, the Contracting Officer

shall so document the contract file. A copy of this justification (rejection) shall be provided to the Director of OSDBU within 2 working days of the date the Contracting Officer receives the Director's recommendation.

e Once the Contracting Officer's rejection of the Director of OSDBU's recommendation is received, the Director shall do one of the following:

(1) Concur with the rejection and so notify the Contracting Officer within 2 working days of receipt of the Contracting Officer's rejection notice. Upon receipt of OSDBU concurrence with the Contracting Officer's rejection decision, synopsis and subsequent procurement actions may proceed; or

(2) If the Director of OSDBU does not concur with the Contracting Officer's rejection, the Director shall request consultation with Small Business Administration's Procurement Center Representative (PCR) assigned to USDA. Should the PCR concur with the recommendation of the Director of OSDBU, the PCR shall make a recommendation to the Contracting Officer. If the Contracting Officer rejects this recommendation, the procedure at FAR 19.505 shall apply. OSDBU shall conduct the PCR consultation and advise the Contracting Officer of the PCR's position on the contracting strategy within 3 working days from the date of receipt by OSDBU of the Contracting Officer's rejection notice. Contracting action may not proceed until the consultation process is complete or the 3 working day consultation period has elapsed, whichever is first.

8 PROCEDURES FOR CLEARING FOOD COMMODITY PURCHASES

Due to the perishable nature of food commodities and the special market conditions under which such items are procured, the time frames specified in the procedures at paragraph 7 above do not apply. The Director of OSDBU in concert with the Agricultural Marketing Service and the Farm Service Agency will establish a special expedited review procedure for the procurement of food commodities.

