

Approved: 12-14-2012

SUBJECT: SMALL BUSINESS FIRST POLICY

PURPOSE AND SCOPE

To establish a Small Business First Policy that:

- (1) Enforces compliance with the Small Business Act (Public Law 85-536, as amended), Small Business Jobs Act of 2010, and other applicable laws, Executive Orders, regulations and best business practices.
- (2) Ensures prime contracting opportunities are available to the maximum extent practicable to small business concerns, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (3) Ensures the formal reporting of market research prior to approval of a contract action to other than a small business in accordance with Federal Acquisition Regulation (FAR) Part 10.
- (4) Ensures accountability via performance expectations of Program Officials, Contracting Officers and other acquisition officials relative to consultation, coordination and approval of contract actions.

POLICY

The Department of Energy (DOE) is committed to maximizing opportunities for small business contracts, including prime contracts and subcontracts, while driving towards operational excellence and efficiency across the enterprise.

It is the policy of DOE that its program and acquisition officials responsible for the initiation, review, approval, execution and/or modification of contract actions (i.e. relating to contract awards, orders placed under Federal Supply Schedules, orders placed under Government-wide Acquisition Contracts, Blanket Purchase Agreements, Multiple Award Contracts, Blanket Basic Ordering Agreements, Basic Agreements, letter contracts, and contract modifications outside the original scope of work using appropriated funds) be committed to provide maximum practicable prime contracting opportunities to small businesses consistent with applicable laws by complying with the following:

- (1) Headquarters and field office contract actions above the \$3,000 micro-purchase threshold and under the \$150,000 simplified-acquisition threshold shall be reserved for small business concerns unless a contracting officer provides an appropriate justification for not awarding the contract to a small business.
- (2) In accordance with Section 1331 of the Small Business Jobs Act of 2010, Public Law 111-240, and Title 13 of the Code of Federal Regulations Parts 121, 124, 125 and 127, program and acquisition officials will set aside for small business concerns both (a) part or parts of multiple award contracts and (b) orders placed against multiple award contracts (notwithstanding the fair opportunity requirements set forth in 41 U.S.C.). When DOE intends to make multiple contract awards, program and acquisition officials will reserve one or more contract awards for small business concerns under full and open competition.
- (3) Contract actions valued at \$100 million and over, for other than Management and Operating (M&O) contracts, will undergo a review by the Advanced Planning Acquisition Team (APAT), as described in Chapter 19 of the DOE Acquisition Guide. The APAT is comprised of top management from the Office of Small and Disadvantaged Business Utilization (OSDBU), the Office of Acquisition and Project Management, the National Nuclear Security Administration's Office of Acquisition Management, Program Element Project Managers, and a SBA Procurement Center Representative.
- (4) Contract actions for DOE's M&Os (including FFRDCs) will not require an APAT review, but will be discussed with the OSDBU prior to the development of the statement of work, so that the OSDBU may provide its perspective on the adequacy and appropriateness of the planned subcontracting goals and present recommendations for small business prime contracting opportunities. Program offices will advise the OSDBU of their intent with respect to the planned procurement prior to finalizing the procurement action.
- (5) The OSDBU will review all proposed acquisitions over \$3 million not set aside for small business concerns as described in Chapter 19 of the DOE Acquisition Guide, and provide its perspective on such actions within 10 business days of receipt. Failure to provide its perspective will be taken as concurrence.
- (6) When DOE has a new requirement or where an existing requirement is up for a new award, acquisition officials in consultation with the program officials will determine if existing contract work requirements(s) can be fulfilled by existing small business vehicles and if not, the acquisition official shall conduct market research to determine if viable small businesses exist to satisfy the contract work requirement(s). The results shall be included in the acquisition strategy and/or acquisition plan, as appropriate. The analysis will consist of the following steps:

Step 1: Assess Existing Contract Awards: When DOE has a new requirement or where an existing requirement is up for a new award, DOE personnel responsible for the initiation, review, approval, execution and/or modification of all contract types will assess -- whether contract work requirement(s) can be fulfilled by an existing small business contract vehicle.

Step 2: Conduct Market Research: Market research will be conducted to determine if two or more capable small businesses exist to fulfill contract work requirement(s) at a fair market price. See FAR Part 19. A summary of the market research approach, process, and findings commensurate with the size and complexity of the procurement using Federal Acquisition Regulation Subpart 10.002 as a guide is required. The contract file shall contain the results of the market research including, but not limited to, government or commercial database searches, sources sought, interactive meetings with industry, and other actions that demonstrate small businesses were provided full consideration for the government's requirement.

Step 3: Develop an Acquisition Strategy and/or Acquisition Plan: Once steps (1) and (2) above have been conducted, an acquisition strategy and/or acquisition plan must be developed (see FAR 7.105, FAR 34.004, DOE Acquisition Guide Chapter 7.1, and DOE Guide 413.3-313). The following must be considered for the development of the acquisition strategy and/or acquisition plan:

- (a) Section 1331 of the Small Business Jobs Act of 2010, Public Law 111-240 and Title 13 of the Code of Federal Regulations Parts 121, 124, 125 and 127, standard(s) for setting-aside part or parts of multiple award contracts for small business concerns.
- (b) Whether to set aside orders placed against multiple award contracts for small business concerns (notwithstanding the fair opportunity requirements set forth in 41 U.S.C. § 4106).
- (c) When DOE intends to make multiple contract awards, whether to set aside one or more contract awards for small business concerns under full and open competition.

This Policy is not applicable for the following:

- (1) Internal Transactions - DOE salaries, operational costs, travel, training;
- (2) Non-Appropriated Funds - Procurements with funds generated from other sources (e.g., U.S. Postal Service, Bonneville Power Administration);

- (3) Mandatory Sources - AbilityOne Services (Javits-Wagner O'Day Act), UNICOR (Prison Industries);
- (4) Foreign Governments - Usually funded with foreign country funds, foreign military sales;
- (5) Non-Federal Acquisition Regulation contracts; and
- (6) Financial Assistance agreements.

ANNUAL REVIEW

The OSDBU and SBPMs will conduct an annual review of awards to other than small business to measure the success of this Policy.

BY ORDER OF THE SECRETARY OF ENERGY:



DANIEL B. PONEMAN
Deputy Secretary