



Washington, D.C. 20530

January 27, 2006

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: Michael H. Allen *Michael H. Allen*
Procurement Executive
David Sutton
David Sutton, Director
Office of Small and Disadvantaged
Business Utilization

SUBJECT: DOJ Procurement Guidance Document 06-02
Small Business Procurement Reviews

Purpose

The purpose of this document is to implement procedures for reviewing procurements to ensure that small businesses have the maximum practicable opportunity to participate in DOJ prime and subcontracts.

Background

As stated in FAR 19.201(a), it is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. FAR Subpart 19.5 addresses procedures for setting aside acquisitions for small businesses.

In accordance with the Small Business Act (Public Law 85-536, as amended) and 28 CFR §0.18a, the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the implementation and execution of the functions and duties required by sections 637 and 644 of title 15 U.S. Code. These responsibilities include reviewing procurements to ensure small business concerns have maximum practicable opportunities to participate in Department acquisitions and having supervisory authority over individuals performing functions and duties of the Director, OSDBU.

Procedures

1. **Prime Contract Opportunities.** Department contracting and program officers shall do adequate market research, in accordance with FAR 10.001, to determine whether requirements are within the capabilities of small businesses and to mitigate the impacts of contract bundling on small businesses. To document research efforts, Contracting Officers (COs) shall prepare a "Record of Small Business Procurement Review," copy attached, for each planned open market procurement estimated to cost more than \$100,000. Specifically excluded from this requirement are delivery/task orders and modifications issued against existing open market contracts and Federal Supply Schedules—unless such orders or modifications result in contract bundling as defined in FAR 7.104(d)(2). Excluded also from this requirement are proposed open market acquisitions that are exempt from full and open competition in accordance with Subpart 6.3 of the FAR. The CO shall provide the completed form to the cognizant small business specialist for review and concurrence.

a. Small Business Set-asides. In cases where a bureau and its small business specialist agree that a planned procurement shall be a full or partial small business set-aside (whether a Small, 8(a), HUBZone, or Service-Disabled Veteran-Owned Small Business Set-aside), the small business specialist's concurrence shall be considered final and the Director, OSDBU shall not be involved in the review process. (This includes situations where the contracting officer anticipates a multiple award and some, but not all, of the awards are set aside for small businesses.) However, when determining set-aside types, i.e., Small, 8(a), HUBZone, or Service Disabled Veteran-Owned Small Business set-asides, bureaus should consider the results of market research and areas where small business goals are not being met.

b. Other Than Small Business Set-asides. In cases where a bureau and its small business specialist agree that a planned procurement will not be a small business set-aside, the Record of Small Business Procurement Review Form, along with all supporting documentation, shall be provided to the Director, OSDBU for concurrence. The supporting documentation should include market research that clearly shows why the procurement is not suitable for award to a small business.

c. Disagreements. In cases where bureau personnel and small business specialists cannot agree that a requirement will or will not be set-aside for small businesses, the procurement review form, along with all supporting documentation, shall be forwarded to the Director, OSDBU for the Director's recommendation. If the disagreement cannot be resolved at this level, the matter shall be elevated to the Department's Senior Procurement Executive for resolution.

d. Time Frames. The turnaround time for small business specialist review shall be no more than 10 workdays from the date of receipt of the review form and supporting documentation. The turnaround time for OSDBU review shall be no more than five

workdays from the date of receipt of the review form and supporting documentation. Should small business specialists or the Director, OSDBU not receive adequate supporting documentation, the package shall be returned to the CO and the turnaround time shall start over once a complete package is received. To ensure that procurements are not delayed, it is imperative that COs prepare procurement review forms, along with supporting documentation, as early as possible during the procurement process. For unforeseen urgent requirements, however, small business specialists and the Director, OSDBU shall perform their reviews as expeditiously as possible, considering workload and available staffing.

e. Oversight. The Director, OSDBU shall make periodic reviews to evaluate small business specialists' procedures for conducting prime contract reviews and make recommendations where appropriate. The Director, OSDBU shall also follow-up with small business specialists when anything comes to his/her attention that indicates adequate consideration was not given to utilizing small businesses for a particular requirement.

2. Subcontract Opportunities. All reviews of prime contractors' proposed small business subcontracting plans shall be the responsibility of the Director, OSDBU. COs shall provide proposed plans to the Director, OSDBU for review. The Director, OSDBU shall review the plans to determine whether the prime contractors' proposed subcontracting goals are in line with the department's subcontracting goals. Based on this review, the Director, OSDBU shall either recommend approval of the proposed subcontracting plans as submitted or recommend that the CO request the prime contractors to increase subcontracting goals. The Director, OSDBU shall complete his/her review of proposed subcontracting plans within 10 workdays of receipt. Once the CO approves a prime contractor's subcontracting plan, the CO shall provide a copy of the approved plan to the Director, OSDBU. The Director, OSDBU shall use the approved subcontracting plans to monitor actual small business subcontracting accomplishments in the Electronic Subcontract Reporting System (eSRS).

3. Waivers. The requirements contained in this document may be waived in whole or in part by the Director, OSDBU. Requests for waiver must be in writing from the Bureau Procurement Chief or equivalent, and fully explain and document the basis for a waiver.

Please make this memorandum immediately available to the appropriate people in your organization and add this document to your collection of DOJ Procurement Guidance Documents. Questions should be directed to David Sutton, Director, OSDBU at 202/616-0523 or by email at david.sutton@usdoj.gov.

Attachment [\[Click to View Attachment\]](#)

cc: Department Small Business Specialists