

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250

<b>DEPARTMENTAL REGULATION</b>		<b>NUMBER:</b> 5090-001
<b>SUBJECT:</b> USDA Small Business Programs - Full Small Business Participation & Clearance Process for Contracts Not Set-aside or Reserved for Small Business Participation	<b>DATE:</b> June 14, 2007	
	<b>OPI:</b> Office of Small and Disadvantaged Business Utilization	

## 1 PURPOSE

All USDA employees involved in the acquisition planning, strategy, and execution phases must fully consider and utilize small businesses when identifying contractors that can meet USDA requirements to achieve USDA program goals. This regulation prescribes small business set-aside policies, responsibilities, and procedures for the **clearance of contracts over the simplified acquisition threshold not set-aside or reserved for small business participation, including bundled contracts**. Open market acquisitions of supplies and services over the micro-purchase amount and under the simplified acquisition threshold are statutorily reserved for small business concerns. This policy applies to all acquisitions, including those developed and executed outside the Washington, DC, metropolitan area.

## 2 CANCELLATIONS

Departmental Regulation 5090-1, Clearance Process for Small Business Set Aside and Use of 8(a) Programs, dated November 13, 1997

Departmental Regulation 5090-4, Rule of One Policy Under Simplified Acquisition Procedures, dated October 9, 1998

## 3 REFERENCES

- a 15 U.S.C. 631 (Small Business Act)
- b 15 U.S.C. 637(a)
- c 15 U.S.C. 644(a), (e), and (j)
- d Federal Acquisition Regulation (FAR)

## 4 FORMS

AD-1205 - USDA Small Business Program – Procurement Request Review  
(Appendix A)

## 5 DEFINITIONS

- a **Acquisition Planning** - Acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.
- b **Agency Head (within USDA)** – The head of an USDA agency or staff office with ultimate authority for the actions of a major line or program organization of the Department who reports to the Secretary, Deputy Secretary, an Under or Assistant Secretary, or a General Officer.
- c **Agency Program Executive and/or Manager** – The agency representative designated to lead and manage a program activity of a USDA agency or staff office, including the identification of programmatic requirements resulting in contracting actions.
- d **Agency Small Business Specialist/Coordinator (SBS)** – The agency representative designated by the Head of the Contracting Activity (HCA) to ensure agency compliance with USDA small business programs.
- e **Bundling** – Bundling is consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to the diversity, size, or specialized nature of the elements of the performance specified; the aggregate dollar value of the anticipated award; the geographical dispersion of the contract performance sites; or any combination of the above criteria outlined above in this definition.
  - (1) “Separate smaller contract” as used in this definition means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

- (2) “Single contract” as used in this definition includes:
- (a) multiple awards of “indefinite delivery indefinite quantity” contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR 16.504(c)); and
  - (b) an order placed against an “indefinite delivery indefinite quantity” contract under 5e(2)(a):
    - 1 Federal Supply Schedule contract; or
    - 2 task-order contract or delivery-order contract awarded by another agency (i.e., Government-wide acquisition contract or multi-agency contract).

NOTE: Contracting strategies that include bundling are subject to review by the Agency SBS, Agency HCA or Designee, Director of OSDBU, and the SBA Procurement Center Representative. This review should begin at the earliest planning stages when contract bundling is being considered as one of the contracting strategies.

- f **Head of Contracting Activity (HCA) or HCA Designee** – The official who has overall responsibility for managing a contracting activity (i.e., Chief, Forest Service; Administrator, Agricultural Research Service; etc.) and who is responsible for establishing and reporting on small business preference goals, or the individual designated by such an official to carry out the functions of the HCA.
- g **Micro-Purchase** – An acquisition of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold (FAR 2.101).
- h **SBA Procurement Center Representative (PCR)** – The SBA representative designated to carry out the review of contract actions over the micro-purchase and simplified acquisition thresholds not set-aside for small business participation. The SBA PCR also reviews contracting actions to ensure that the bundling of procurement requirements does not adversely impact small businesses.
- i **Simplified Acquisition Threshold** – The simplified acquisition threshold is \$100,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 428a).

- j **Small Business** - The Small Business Act defines a small business concern as one that is independently owned and operated and not dominant in the field of operation in which it is bidding on government contracts. In addition, to qualify as a small business concern a firm must meet the size standards prescribed by the SBA for the field of operation. SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).
- (1) **Small Disadvantaged Business Concern.** A small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged. This can include a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and whose management and daily business is controlled by one or more such individuals.
  - (2) **8(a) Business Concern.** A firm owned and operated by socially and economically disadvantaged individuals and eligible to receive federal contracts under the Small Business Administration’s Section 8(a) Business Development Program.
  - (3) **HUBZone Small Business Concern.** A small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration. “HUBZone” means a historically underutilized business zone that is in an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.
  - (4) **Service-Disabled Veteran-Owned Small Business Concern.**
    - (a) A small business concern—
      - 1 not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

2 the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

- (b) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).
- (5) **Veteran-Owned Small Business Concern.** A small business concern—where not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and the management and daily business operations of which are controlled by one or more veterans.
- (6) **Women-Owned Small Business Concern.** A small business concern that is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

## 6 POLICY

It is USDA policy to fully consider small businesses when conducting market research and acquisition planning, and to identify and utilize small business contractors to meet USDA requirements to the maximum extent practicable to achieve USDA program goals. Small business, as used herein, includes small, small disadvantaged, 8(a), HUBZone, Service Disabled Veteran-Owned, Veteran-Owned<sup>1</sup>, and Women-Owned small businesses.

- a **Micro-Purchases.** Although not a mandatory requirement of the FAR, purchase cardholders should consider small businesses to the maximum extent practicable when making micro-purchases.

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<sup>1</sup> There is no mandated Government-wide goal specifically for Veteran-Owned small business. Veteran-Owned small business awards contribute to small business goal achievement.

- b **Simplified Acquisition Procedures.** Every open market acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold but not over \$100,000 is statutorily reserved exclusively for small business concerns (15 U.S.C. Section 644(j)). All unrestricted procurements over the micro-purchase threshold and under the simplified acquisition threshold not awarded to small business concerns must be justified and documented. The documentation is subject to review by the agency HCA or Designee, Director of OSDBU and SBA PCR (as applicable).
- c **Over the Simplified Acquisition Threshold (\$100,000 and Above)**
- (1) **All Sources.** All unrestricted procurements over the simplified acquisition threshold not already set-aside or reserved for small business participation must be submitted to the Director of OSDBU and SBA PCR for clearance not later than 15 working days prior to synopsis. Proposed contract actions shall be reviewed and their proposed acquisition method approved or disapproved as outlined in this directive.
- (2) **Multiple Award Contracts (Government-wide, USDA-wide, and Agency-wide Acquisition Vehicles).** While the small business programs as described in FAR Part 19 are not mandatory when using multiple award contracts, the requirement to consider small businesses as sources of supply has not been waived. In order to maximize opportunities for small business participation, if the use of a multiple award contract is anticipated and the contracting action will exceed \$1 million and will not use a small business acquisition method, the Head of the Contracting Activity or Designee will notify the Director of OSDBU during the market research phase.
- (3) **Federal Supply Schedule Contract Actions.** Although the mandatory preference programs of FAR Part 19 do not apply, ordering activities may consider socio-economic status when identifying contractor(s) for consideration or competition for award of an order or blanket purchase agreement (BPA). In order to maximize opportunities for small business participation, if the use of a Federal Supply Schedule is anticipated and the contracting action will exceed \$1 million and will not use a small business acquisition method, the HCA or Designee will notify the Director of OSDBU during the market research phase.

- d **Bundled Acquisitions.** All acquisitions of \$2 million or more that involve bundling, unless the order is entirely reserved or set-aside for small business under FAR Part 19, must be coordinated with the Agency SBS and HCA or Designee. Bundled contracts must be cleared by the Director of OSDBU and SBA PCR using the same clearance process outlined in this Departmental Regulation for contracts not set-aside for small business participation.

## 7 RESPONSIBILITIES

- a **Agency Heads, Deputy Administrators for Management (DAMS) or equivalent, and Designated Agency HCAs or Designees** will ensure that all proposed contract actions **over the simplified acquisition threshold not set-aside or reserved** for small business participation are provided to the Director of OSDBU and SBA PCR for concurrence as outlined in the procedure sections of this directive. In addition, they will ensure that all unrestricted procurements over the micro-purchase threshold and under the simplified acquisition threshold not awarded to small business concerns are justified and adequately documented.

### **Agency HCAs or Designees** will:

- (1) Effectively implement the small business programs within their activities, including achieving program goals.
  - (2) Ensure that contracting and technical personnel maintain knowledge of small business program requirements and take all reasonable action to increase participation in their activities' contracting processes by these businesses.
  - (3) Ensure agency review and concurrence of all planned contract action strategies over the micro-purchase and over the simplified acquisition thresholds that are not set-aside or reserved for small business, including those using bundling strategies, are justified and adequately documented.
- b **Program Executive and Managers** will consult with the agency's designated contracting officer, agency SBS or HCA, or OSDBU during the acquisition method and planning phases to ensure that their actions adhere to the requirements of the Small Business Act (Public Law 85-536 and, as amended, Public Law 95-507), related legislation, FAR, Agricultural Acquisition Regulation (AGAR), and Departmental Regulations.

- c **Contracting officers** will:
- (1) Provide advice and counsel to program executives and/or managers during the acquisition planning and strategy phases to ensure they are fully aware of small business requirements.
  - (2) Fully consider and utilize small business participation as required by the Small Business Act and related legislation, FAR, AGAR, and Departmental Regulations when conducting market research to identify businesses to meet the requirements and goals of the contracting action.
  - (3) Meet with the Agency SBS and OSDBU to discuss efforts to identify small businesses that can meet USDA programmatic requirements. For those actions not set-aside or reserved for small business, meet with the Agency HCA or Designee to discuss and gain concurrence or non-concurrence.
- d **Agency SBSs** will review all planned contract action strategies over the micro-purchase and over the simplified acquisition thresholds that are not set-aside or reserved for small business, including those using bundling strategies. The Agency SBS should be involved at the earliest stages of the market research and acquisition planning phase to ensure full consideration for small business concerns.
- e **The Director of OSDBU** will:
- (1) Intervene at the earliest possible opportunity during the market research and acquisition planning phases to ensure full consideration of small businesses that can meet USDA programmatic requirements.
  - (2) Review and approve/disapprove all Procurement Request Reviews, via the AD-1205, over the simplified acquisition threshold not set-aside or reserved for small businesses.
  - (3) Review contracting actions over the micro-purchase and under the simplified acquisition threshold not set-aside or reserved for small business, as applicable.
  - (4) Make recommendations as to whether a particular acquisition will be awarded or set-aside for small business, as applicable.



- f **The Secretary of Agriculture** will make the final decision for those contracting actions appealed by the Small Business Administration. He/She will provide a justification to the SBA Administrator on set-aside appeals that cannot be resolved at the USDA agency/staff office level.

**8 PROCEDURE – CONTRACTING ACTIONS OVER THE SIMPLIFIED ACQUISITION THRESHOLD NOT SET-ASIDE OR RESERVED FOR SMALL BUSINESSES, INCLUDING BUNDLED CONTRACTS**

For each contract requirement over the simplified acquisition threshold that has not been set-aside or reserved for small businesses, the following actions must take place prior to proceeding with the procurement action.

- a **Contracting Officers** will prepare the form AD-1205 described in Appendix A and forward it with a copy of the review package through Agency internal clearance procedures to the contracting activity's **Agency HCA or Designee** for concurrence or non-concurrence of acquisition method. If the Agency does not set aside or reserve the contracting action for small business, the **Agency HCA or Designee** will forward the clearance form, along with the review package, to the **Director of OSDBU and SBA PCR** for final clearance at least 15 working days in advance of synopsis.

A complete review package must include:

- (1) statement of work or complete solicitation,
- (2) estimated cost of the contract and all options years, if any, and
- (3) contracting officer's justification for not setting aside or reserving the requirement for small business. Justifications must include at a minimum:
  - (a) a description of the contracting office's effort to identify potential small businesses to participate in the requirement, i.e., search of the Central Contractor Registration (CCR), VetBiz.gov, advertising Sources Sought requests, and any other type of market surveys; and
  - (b) any other pertinent information used in making the decision.

- b **The Director of OSDDBU and SBA PCR** will review each proposed action and respond to the Agency HCA or Designee within 15 working days of receipt of the complete review package.
- (1) **Concur.** The clearance package will be returned to the Agency HCA or Designee with no further clearance action required by the contracting agency.
  - (2) **Non-Concur.** The clearance package will be returned to the agency for action as described in paragraph c below.
  - (3) **No Response.** If the agency does not receive a response within 15 working days of receipt of the clearance package from the Director of OSDDBU and the SBA PCR, the Agency HCA or Designee may proceed with the procurement.
- c Once **the Agency HCA or Designee** has received the clearance package from OSDDBU, the following actions will be taken:
- (1) If OSDDBU concurred, continue the procurement action.
  - (2) If OSDDBU's recommendation was to set the acquisition aside for one of the small business programs, the Agency HCA or Designee will take the following actions:
    - (a) If the Agency HCA or Designee **concurs** with the recommendation to set-aside or to partially set-aside, the synopsis release and subsequent procurement actions may proceed based on the revised acquisition method.
    - (b) If the Agency HCA or Designee **does not concur** with the recommendation of the Director of OSDDBU, the Contracting Officer will so document the contract file. A copy of this justification (rejection) will be provided to the Director of OSDDBU within 2 working days of the date the Agency HCA or Designee receives the Director's recommendation.
- d Once the Agency HCA's or Designee's rejection of the Director of OSDDBU's recommendation is received, the **Director of OSDDBU** will do one of the following:

- (1) If the Director of OSDBU **concurs** with the rejection, notify the Agency HCA or Designee within 3 working days of receipt of the Agency HCA or Designee's rejection notice. Upon receipt of the OSDBU concurrence with the Agency HCA's or Designee's rejection decision, synopsis and subsequent procurement actions may proceed.
- (2) If the Director of OSDBU **does not concur** with the Agency HCA's or Designee's rejection, the Director will request consultation with the SBA PCR assigned to USDA.

OSDBU will conduct the SBA PCR consultation and advise the Agency HCA or Designee of the SBA PCR's position on the acquisition method within 3 working days from the date of receipt by OSDBU of the Agency HCA's or Designee'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. Should the SBA PCR concur with the recommendation of the Director of OSDBU, the SBA PCR will make a recommendation to the Agency or Staff Office Head. The Director of OSDBU will advise USDA's Chief Acquisition Officer regarding OSDBU's recommendation.

- (3) If the Director of OSDBU **does not respond** within 3 working days, synopsis and subsequent procurement actions may proceed.

e The SBA PCR may appeal the Agency's rejection to the Agency Head or Staff Office Head within 2 working days after receiving the notice. The Agency or Staff Office Head will render a decision in writing, and provide it to the SBA representative within 7 working days. Pending issuance of a decision to the SBA PCR, the Agency HCA or Designee shall suspend action on the acquisition.

- (1) If the Agency or Staff Office Head agrees that the Agency HCA's or Designee's rejection was appropriate –
  - (a) within 1 working day, the SBA PCR may request the Agency HCA or Designee to suspend action on the acquisition until the SBA Administrator appeals to the Secretary of Agriculture (FAR Part 19.505(f)); and
  - (b) the SBA must be allowed 15 working days after making such a written request, within which the Administrator of SBA –

- 1 may appeal to the Secretary of the Agriculture, and
- 2 must notify the Agency HCA or Designee whether the further appeal has, in fact, been taken. If notification is not received by the Agency HCA or Designee within the 15-day period, it is deemed that the SBA request to suspend the contract action has been withdrawn and that an appeal to the Secretary will not be forthcoming.

- f When the Agency or Staff Office Head has been notified within the 15-day period that the SBA has appealed to the Secretary of Agriculture, the Agency Head will forward justification for its decision to the Secretary of Agriculture. The Agency HCA or Designee must notify the contracting officer to suspend contract action until notification is received that the SBA appeal has been settled.
- g The Secretary of Agriculture will reply to the SBA within 30 working days after receiving the appeal. The decision of the Secretary will be final.
- h A request to suspend action on an acquisition need not be honored if the Secretary determines that proceeding to contract award and performance is in the public interest. The contracting officer will include in the contract file a statement of the facts justifying the determination, and will promptly notify the SBA PCR of the determination and provide a copy of the justification.

**9 PROCEDURE – MULTIPLE AWARD CONTRACT ACTIONS (GOVERNMENT—WIDE, USDA-WIDE, AND AGENCY-WIDE ACQUISITION VEHICLES)**

**Ordering Activities**, in accordance with FAR 7.105(b), in the conduct of acquisition planning and market research, should include consideration of 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 Part 19), and the impact of any bundling that might affect their participation in the acquisition (FAR 7.107). In those cases where the use of a multiple award contract is anticipated and the contracting action will exceed \$1 million and will not use a small business acquisition method, the ordering activity must notify the Head of the Contracting Activity or Designee. The Head of the Contracting Activity or Designee will use form AD-1205 to notify the Director of OSDDBU during the market research phase.

## **10 PROCEDURE - FEDERAL SUPPLY SCHEDULE CONTRACT ACTIONS**

**Ordering activities**, should consider, if available, at least one small business, small disadvantaged business, HUBZone small business, service disabled veteran-owned small business, veteran-owned small business, or women-owned small business schedule contractor(s) in all Federal Supply Schedule contract actions. Orders placed against the schedules may be credited toward the ordering agency's small business goals. In those cases where the use of the Federal Supply Schedule is anticipated and the contracting action will exceed \$1 million and will not use a small business acquisition method, the ordering activity must notify the Head of the Contracting Activity or Designee. The Head of the Contracting Activity or Designee will use form AD-1205 to notify the Director of OSDBU during the market research phase.

## **11 PROCEDURE - HANDLING BUNDLED ACQUISITIONS**

When the proposed acquisition strategy involves bundling, **Ordering Activities** will:

- a identify the incumbent contractors and contracts affected by the bundling, and
- b address the extent and results of the market research and indicate their impact on the various elements of the plan (FAR Parts 2, 7, 10, and 19).

If the strategy involves substantial bundling (\$2 million or more), the Agency SBS and HCA or Designee will assist in identifying alternate strategies that would reduce or minimize the scope of bundling. Bundled contracts must be cleared by the Director of OSDBU and SBA PCR using the same clearance process outlined in this Departmental Regulation for contracts not set-aside for small business participation, including those contracting actions using multiple award contracts or the Federal Supply Schedule.

## **12 PROCEDURE - CLEARING FOOD AND COMMODITY PURCHASES**

Due to the perishable nature of food commodities and the special market conditions under which such items are procured, the timeframes specified above do not apply to the Agricultural Marketing Service and Farm Service Agency when making commodity purchases. Annual clearances must be reviewed by the Director of OSDBU for each commodity division for set-aside potential for the procurement cycle.

