



**Department of Energy
Acquisition Regulation**

**No. 2007-11
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ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: Small Business Program Updates

References:

FAR 5.303	Announcement of contract awards
FAR 19.201	General policy
FAR 19.502-2	Total small business set-asides
FAR 19.704	Subcontracting plan requirements
FAR 19.708	Contract clause
FAR 19.805	Competitive 8(a)
FAR 19.1002	Definitions
FAR 19.12	Small Disadvantaged Business Participation Program
FAR 19.1306	HUBZone sole source awards
13 CFR Chapter 1	Small Business Administration
DOE's Annual Report to the Secretary on the Small Business Programs for FY 2006	
Guidance on the Department of Energy's Subcontracting Program, September 2006	
FY 2007 DOE Strategic Plan for Small Business	
Partnership Agreement between SBA and DOE	

Effective date of the Acquisition Letter (AL)

This AL is effective upon the date of issuance.

AL Expiration

This AL remains in effect until superseded or canceled. This AL supersedes AL-2005-08 (Small Business Programs, dated June 10, 2005), which is rescinded.

Points of Contact

Contact Stephen Zvolensky, Department of Energy (DOE) Office of Procurement and Assistance Policy, at (202) 287-1307 or stephen.zvolensky@hq.doe.gov, or Gary Lyttek, National Nuclear Security Administration (NNSA) Office of Acquisition and Supply Management, at (202) 586-8304 or gary.lyttek@nnsa.doe.gov, or Nickolas Demer, Office of Small and Disadvantaged Business Utilization (OSDBU), at (202) 586-1614 or Nickolas.demer@hq.doe.gov.

Purpose of the AL

The purpose of this AL is to make available recent guidance on contracting with small business concerns. Much of the coverage from the previous AL has been moved to the Acquisition Guide Chapter 19. A summary of recent DOE publications and small business policy guidance follows.

FY 2007 DOE Strategic Plan for Small Business

The FY 2007 DOE Strategic Plan for Small Business can be found at: http://clearinghouse.doe.gov/Publications/FY_2007_Small_Business_Strategic_Plan.pdf. The document addresses the mission of the OSDBU, small business legislation, small business goaling, applicable GAO recommendation, and small business achievements.

FY 2006 Small Business Report

Policy Flash 2007-18 distributed DOE's Annual Report to the Secretary on the Small Business Programs for FY 2006. The report includes small business participation in prime contracting, subcontracting, innovative research, and technology transfer. It also covers DOE's small business programs, goals and initiatives. The report is available online at: <http://management.energy.gov/documents/FY2006SmallBusinessReport.pdf>

Guidance on the DOE Subcontracting Program

The OSDBU published a document, dated September 2006, entitled "Guidance on the Department of Energy's Subcontracting Program." It can be found at: <http://management.energy.gov/documents/SubcontractingGuidelines.pdf>. This guidance provides uniform direction to the DOE personnel and its major prime contractors in order to assist them in utilizing "best practices" in their pursuit of a comprehensive and successful subcontracting program. It also highlights the oversight responsibility of the OSDBU, and its role in ensuring that the Department engages all elements in enhancing DOE's small business subcontracting program. It identifies the roles, responsibilities, and the interaction of personnel in these roles, as they implement the departmental small business subcontracting program.

Contracting with Service-Disabled Veterans

On January 24, 2007, Steven C. Preston, the Administrator of the SBA, and Paul A. Denett, the Administrator of the Office of Federal Procurement Policy, signed a joint memorandum regarding contracting with Service-Disabled Veterans. The web link is: <https://www.whitehouse.gov/omb/memoranda/fy2007/m07-08.pdf>. The memorandum called on agencies to work closely with SBA headquarters and field offices to "continue administration coordination and outreach" to meet or exceed the service-disabled veteran-owned small business (SDVOSB) contracting goals. "The same qualities of service, leadership, and dedication exhibited by service-disabled veterans can make them ideal contractors and subcontractors," the memorandum said, "We need to continue to reach out to these small businesses, encourage their development, and create more procurement opportunities for their success." Executive Order 13360, signed Oct. 21, 2004, 69 Fed.Reg. 62549 (October 26, 2004), requires agencies to provide increased federal contracting and subcontracting opportunities to SDVOSBs.

Recertification of Small Business Size status

The SBA issued a final rule on small business size standard recertification, which can be found in the November 15, 2006 (71 Fed.Reg. 66434) edition of the Federal Register: <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-19253.pdf>. The rule amended SBA's regulations to address the time at which size is determined for the purposes of long-term federal contracts including Governmentwide Acquisition Contracts (GWACs), the General Services Administration (GSA) Multiple Award Schedule (MAS) contracts and multi-agency contracts (MACs). SBA also amended its 8(a) Business Development regulations to address when a business concern may receive orders as an 8(a) program participant under GSA's MAS Program and other multiple award contracts.

The purpose of the rule is to ensure that small business size status is accurately represented and reported over the life of long-term Federal contracts. Long-term contract means a contract of more than five years in duration, including options. However, this term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at FAR 52.217-8, Option to Extend Services, or other appropriate authority.

Currently, a small business firm keeps its size designation for the life of a contract. Under the new rules, contractors that are registered as small businesses will have to recertify their size status when they buy another company, are acquired by a company, or merge. Recertification also will be required after five years of a long-term contract, and thereafter whenever an option is exercised or an order is placed against any multiple-award type contract. Agencies will be able to continue doing business with contractors that have outgrown their small business size status; however, they will not receive small business credit for these contracts.

A FAR interim final rule implementing the SBA final rule was published in the Federal Register July 5, 2007 (72 Fed.Reg. 36852) and applies to solicitations issued and contracts awarded on or after June 30, 2007. For contracts awarded prior to June 30, 2007, Contracting Officers must modify existing long-term contracts, as defined in the interim rule at FAR 19.301-2(a), awarded to small businesses to include the clause at 52.219-28, Post-Award Small Business Program Rerepresentation. Contracting Officers must also modify contracts awarded to small business concerns, other than long-term contracts, to include the clause at 52.219-28, at the time that an option is exercised. The clause is required in all contracts, including those awarded to other than small businesses, since there is also a possibility that a size status will change over the course of a contract due to divestitures, or loss of revenue or employees.

Applicable to existing contracts - Contracting Officers must modify existing long-term contracts awarded prior to June 30, 2007 to incorporate the interim FAR rule.

Contracting Officers must also modify contracts awarded to small business concerns, other than long-term contracts, to include the clause at FAR 52.219-28, at the time that an option is exercised.

Applicable to future solicitation and awards - Contracting Officers must include 52.219-28 in all solicitation and resulting contracts issued after June 30, 2007. If a solicitation issued on or after June 30, 2007, does not include 52.219-28, and the resulting contract is expected to exceed the micro-purchase threshold, Contracting Officers must amend the solicitation to include the clause.

Updating size status in FPDS-NG - Contracting Officers are advised not to take the action required by FAR 4.602(f) until further notice. FAR 4.602(f) requires that the Contracting Officer submit a contract action report (CAR) when the contractor's size status has changed. Contractors will be rerepresenting their size status in the Online Representations and Certifications Application (ORCA) and notifying the Contracting Officer. If the contractor represents that it is no longer a small business, from that point forward the Department may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements. Contracting Officers must wait to submit CARs to change the contractor's size status on a contract until FPDS-NG has been modified. If a Contracting Officer submits a CAR to change the size status for prospective actions under a contract before FPDS-NG has been modified, the size status on past actions will also be changed, corrupting historic small business goaling data. Contracting Officers must also wait to submit the CAR in instances where a contractor voluntarily requests that its size status on a particular contract be changed. You will be notified by separate policy flash when FPDS-NG has been modified to accommodate the changes in size status.

Submit comments on the interim FAR rule - Electronically submit any comments to be considered in the formulation of a final rule to stephen.zvolensky@hq.doe.gov, no later than August 30, 2007, for the DOE consolidated response to the interim rule.

Socioeconomic Program Parity

The SBA is charged with implementing the Small Business Act. The Act sets forth several specific contracting and business assistance programs, which include the 8(a) Business Development (BD), the Historically Underutilized Business Zone (HUBZone), the Service-disabled veteran-owned small business (SDVOSB) concern and Women-owned small business programs. These programs provide contracting preferences to eligible small businesses in Federal contracting. SBA's interpretation of the Small Business Act is that it provides for parity among the HUBZone, SDVO, SBC, and 8(a) BD programs.

The FAR is being revised to ensure that it reflects SBA's interpretation of the Small Business Act and SBA's regulations regarding the relationship among the small business programs. On December 7, 2006, a FAR case was opened. A proposed draft was developed in May of 2007 and is being discussed by the DARC and the CAAC.

8(a) Small Business Partnership Agreement - SBA training

DOE received the new SBA 8(a) Partnership Agreement in February 2007. The agreement replaces previous versions and is effective through September 30, 2009. A pdf version of the Partnership Agreement can be found in Chapter 19 of Acquisition Guide at <http://management.energy.gov/documents/PartnershipAgreementbetweenSBAandDOE.pdf>.

Many of the terms and conditions of the previously versions remain the same. However, some new language regarding DOE's responsibilities under the agreement is included (see pages 4 through 7). The Partnership Agreement places additional emphasis on the contract oversight and management requirements of FAR Subpart 19.8, FAR Part 42, and 13 C.F.R. Part 124. A copy of the SBA training materials can be found at <http://management.energy.gov/documents/PartnershipAgreementsTraining.pdf>

Changes in Thresholds for Small Business Contracting

A final rule amending the FAR to adjust acquisition-related thresholds for inflation was published in the Federal Register on September 28, 2006, 71 Fed.Reg. 57363-57374. (The rule can be found online at:

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/06-8206.htm>). This rule also amends some acquisition-related thresholds that are based on policy rather than statute. Threshold changes affecting contracting with small business are included in the following table.

FAR CITATION	SUBJECT	OLD \$ THRESHOLD	NEW \$ THRESHOLD
5.303	Announcement of contract awards.	\$3 million	\$3.5 million
19.502-2	Total small business set-asides.	exceeding \$2,500 but not over \$100,000	exceeding \$3,000 but not over \$100,000
19.704	Subcontracting plan requirements. (Assurances that the offeror will include the clause at 52.219-8, Utilization of Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities)	subcontracts in excess of \$500,000 (\$1,000,000 for construction)	subcontracts in excess of \$550,000 (\$1,000,000 for construction)
19.708	Contract clause at 52.219-9, Small Business Subcontracting Plan. in solicitations and contracts that offer subcontracting possibilities	expected to exceed \$500,000 (\$1,000,000 for construction)	expected to exceed \$550,000 (\$1,000,000 for construction)

FAR CITATION	SUBJECT	OLD \$ THRESHOLD	NEW \$ THRESHOLD
19.805	Competitive 8(a).	anticipated total value of the contract, including options, will exceed \$5 million for acquisitions assigned manufacturing NAICS codes and \$3 million for all other acquisitions.	anticipated total value of the contract, including options, will exceed \$5.5 million for acquisitions assigned manufacturing NAICS codes and \$3.5 million for all other acquisitions.
19.1002	Emerging small business reserve amount. (for the designated groups described in 19.1005, means a threshold established by the Office of Federal Procurement Policy)	\$25,000 for construction, refuse systems and related services, non-nuclear ship repair, landscaping and pest control services; and \$50,000 for architectural and engineering services.	\$30,000 for construction, refuse systems and related services, non-nuclear ship repair, landscaping and pest control services; and \$50,000 for architectural and engineering services.
19.1202-2	The extent of participation of SDB concerns in performance of the contract in the authorized NAICS Industry Subsector shall be evaluated in competitive, negotiated acquisitions.	expected to exceed \$500,000 (\$1,000,000 for construction).	expected to exceed \$550,000 (\$1,000,000 for construction).
19.1306	HUBZone sole source awards.	anticipated price of the contract, including options, will not exceed— \$5 million for a requirement within the NAICS codes for manufacturing; or \$3 million for a requirement within any other NAICS code	anticipated price of the contract, including options, will not exceed— \$5.5 million for a requirement within the NAICS codes for manufacturing; or \$3.5 million for a requirement within any other NAICS code

FAR CITATION	SUBJECT	OLD \$ THRESHOLD	NEW \$ THRESHOLD
19.1406	Sole source awards to service-disabled veteran-owned small business concerns.	The anticipated award price of the contract (including options) will not exceed—\$5 million for a requirement within the NAICS codes for manufacturing; or \$3 million for a requirement within any other NAICS code	The anticipated award price of the contract (including options) will not exceed—\$5.5 million for a requirement within the NAICS codes for manufacturing; or \$3 million for a requirement within any other NAICS code

Small Business Goaling

DOE annually negotiates Department-wide goals with SBA. The Department establishes individual element goals using the OSDDBU goal documents and forms (found on the OSDDBU website). The OSDDBU's annual Small Business Strategic Plan provides steps the Department will take to increase its small business awards (http://clearinghouse.doe.gov/Publications/FY_2007_Small_Business_Strategic_Plan.pdf). Listed below are both government-wide statutory goals and the DOE goals as negotiated with SBA for FY 2007.

Government-wide small business goals

Prime Contracts

Small business	23 percent
Small disadvantaged	5 percent
Women-owned	5 percent
HUBZone	3 percent
Service-disabled veteran	3 percent

Subcontracts

40 percent
5 percent
5 percent
3 percent
3 percent

DOE Small Business Goals

Prime Contracts

Small business	4.42 percent
Small disadvantaged	1.69 percent
Women-owned	.39 percent
HUBZone	.11 percent
Service-disabled veteran	.08 percent

Subcontracts

41.30 percent
6.33 percent
5.76 percent
2.22 percent
1.25 percent