

Administrative Change

An administrative change to this Business Operating Procedure (BOP) was approved on 09-04-12. In accordance with the Departmental Directives System:

Administrative Changes are simple changes that do not substantively affect the BOP. Examples of such changes are nomenclature, changes to organization names or titles of officials, changes to legal citations, and minor reductions in requirements and responsibilities.

BUSINESS OPERATING PROCEDURE

BOP-003.0701

Approved: 06-11-10
Admin Change 1: 09-04-12

SMALL BUSINESS WAIVER PROCESS



NATIONAL NUCLEAR SECURITY ADMINISTRATION Office of Acquisition and Project Management

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INITIATED BY:
Office of Acquisition Management

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SMALL BUSINESS WAIVER PROCESS

1. PURPOSE.

- a. To establish a Small Business Waiver process that:
 - (1) Furthers 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;
 - (2) Assists in the compliance of the Small Business Act (15 U.S.C. 631, *et seq.*) and other applicable laws, executive orders, regulations, policy issuances and procedures, and sound business practices;
 - (3) Provides checks and balances to ensure that proper market research has been conducted prior to approval of an “other than small business” contracting methodology;
- b. To convey performance expectations to Contracting Officers and other acquisition officials relative to consultation and coordination/approval of their work; and,
- c. To ensure that local implementing procedures are consistent with this business operating procedure.

2. CANCELLATION. Business Operating Policy (BOP)-003.0701, Small Business Waiver Process, dated June 5, 2007.

3. APPLICABILITY.

- a. This BOP applies to all NNSA Federal personnel having programmatic contracting responsibilities, those having contracting authority, and for NNSA Contracting Officers obligating NNSA or non-NNSA funds.
- b. For the purposes of this BOP, the term “contract actions” includes actions relating to solicitations, contract awards, orders placed under Federal Supply Schedules, orders placed under Government-wide Acquisition Contracts, Blanket Purchase Agreements, Basic Ordering Agreements, Basic Agreements, Interagency Agreements, letter contracts, bilateral modifications for new work, and other procurement actions.
- c. Office of the Deputy Administrator for Naval Reactors. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50

USC sections 2406, 2511 and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

4. POLICY.

- a. Proposed acquisitions for award to other than small business concerns require an approved Small Business Waiver.
- b. Small Business Waivers shall be applied in a manner consistent with the overall NNSA Small Business Policy (BOP-003.0305).

5. EXCEPTIONS.

- a. The following actions do not require the processing of a Small Business Waiver:
 - (1) Management and Operating contract awards
 - (2) Exercise of options
 - (3) Contract modifications to extend services as provided by FAR 52.217-8, Option to Extend Services, or FAR 52.237-3, Continuity of Services
 - (4) Financial Assistance
 - (5) Awards made solely with non-appropriated funds
 - (6) All other contracts or agreements not subject to the Federal Acquisition Regulation (FAR)
 - (7) Task or Delivery Orders issued against a master contract that have been previously reviewed under the Small Business Waiver process
 - (8) Contracts awarded as a result of a Broad Agency Announcement
 - (9) Orders or calls placed under Multiple Award Schedule (MAS) Contracts, Multiple Agency Contracts (MAC) or Government-wide Acquisition Contracts (GWACS) using a socio-economic total set-aside program
 - (10) Contracts for local or municipal utilities
- b. In accordance with the Small Business Administration's handbook, "Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals and Achievements, Section D.", dated

July 3, 2003, the following classes of contracts are excluded from the small business goaling base and, thereby, do not require a Small Business Waiver:

- (1) Awards to mandatory sources such as JWOD or UNICOR (see FAR 8.703)
- (2) American Institute of Taiwan
- (3) Contracts awarded and performed abroad
- (4) Contracts performed entirely abroad
- (5) Credit card purchases
- (6) Acquisitions by agencies on behalf of foreign governments or entities
- (7) Contracts for foreign governments or international organizations
- (8) Other procurement categories not included in the goaling program contract base

6. REQUIREMENTS.

- a. NNSA personnel having responsibility for contract actions shall:
 - (1) Ensure that Small Business Waivers are completed and approved or disapproved prior to placing contract actions that exceed the simplified acquisition threshold as defined in FAR Part 2.101; and,
 - (2) Effectively utilize market survey techniques in accordance with FAR Part 10, Market Research, and FAR 19.202-1, Encouraging Small Business Participation in Acquisitions, to develop tailored acquisition strategies that maximize the use of small businesses for programmatic mission fulfillment.
- b. Small Business Waivers for contract actions above the simplified acquisition threshold and up to \$3,000,000 shall be reviewed by the local Small Business Program Manager (SBPM) and be approved by the procuring office's Head of the Contracting Activity (HCA).
- c. Small Business Waivers for contract actions over \$3,000,000 shall be reviewed and approved by the responsible Deputy or Associate Administrator through the Senior Procurement Executive (SPE). Additionally, DOE F 4220.2, Small Business Review, shall be approved by the Office of Small and Disadvantaged Business Utilization (OSDBU) as part of the waiver request if the contract action exceeds \$3,000,000, and was not reserved exclusively for small business.

- d. Small Business Waivers shall contain a clear and sufficient description of the contract action including the reasons the action cannot be awarded to small business with supporting documentation to conclude that the contract action cannot be set-aside for or directly awarded to small business.
- e. The local SBPM shall coordinate with the Small Business Administration (SBA) on acquisitions not unilaterally set aside for small business.

7. RESPONSIBILITIES.

- a. The Office of Acquisition Management (NA-APM-10) is responsible for:
 - (1) Establishing and modifying Small Business Waiver policy and processes;
 - (2) Overseeing contracting systems used by organizational elements within NNSA to ensure compliance with laws, regulations, sound business practices, and policy impacting small business; and,
 - (3) Reviewing and concurring on applicable Small Business Waiver requests.
- b. The SBPM, NNSA HQ, is responsible for coordinating NNSA HQ Small Business Waiver requests that require Deputy or Associate Administrator approval after local processing is accomplished.
- c. The local SBPM is a resource to Contracting Officers concerning market research strategies, Small Business Waiver package development, and local coordination of Small Business Waiver requests. Waiver package development and processing should be initiated as soon as market research actions are completed to mitigate possible impacts to the acquisition strategy milestone schedule. The local SBPM is also responsible for the timely transmittal of waiver packages requiring headquarters approval to NA-APM-10. The NNSA SPE has 10 workdays to make a concurrence determination before forwarding the action to the responsible Headquarters' program office.
- d. NNSA Program Officials (e.g., Program Managers, Project Managers, programmatic contracting officers representatives) are responsible for:
 - (1) Preparing Small Business Waiver requests with the assistance of the Contracting Officer and SBPM;
 - (2) Assisting the Contracting Officer in developing market research plans and criteria to ensure that the small business community is fairly assessed; and,
 - (3) Coordinating waiver package concurrences and approvals within their organizations.

- e. Deputy and Associate Administrators are responsible for approving or disapproving Small Business Waivers for contract actions within their programmatic area that exceed \$3,000,000.
- f. The procuring office's HCA shall approve Small Business Waivers above the simplified acquisition threshold up to \$3,000,000 with the concurrence of the local SBPM.
- g. The Contracting Officer is responsible for:
 - (1) Ensuring that Small Business Waiver requests receive the level of coordination and approval required by this BOP;
 - (2) Managing the market research activities and developing an analysis supporting other than small business decisions;
 - (3) Providing the SBPM electronic copies of all necessary file documentation and any additional supporting data needed by the reviewers to perform an adequate review of the waiver package;
 - (4) Including a copy of the approved Small Business Waiver in the official contract file; and,
 - (5) Ensuring that contract actions are not executed until the appropriate approval steps in this BOP have been accomplished.

8. SMALL BUSINESS WAIVER CONTENTS.

- a. The extent to which a Small Business Waiver is developed and the contents contained within will vary depending upon several factors including estimated dollar value, complexity of the requirement, contract conditions, and marketplace environment.
- b. A Small Business Waiver package shall contain the following documentation:
 - (1) Decision Memorandum - A summary of the proposed action, relevant background, description of services, contracting alternative analysis, market survey process and results, and decision recommendation for the final approving authority. Actions requiring headquarters' approval shall be addressed from the Contracting Officer, through the SPE, to the responsible Deputy or Associate Administrator.
 - (2) Coordination & Approval Document – Coordination from applicable offices including the local Initiating Program Official, Contracting Officer, SBPM, and procuring office HCA.

- (3) Small Business Review Form (DOE F 4220.2) – Shall be included with required signatures. For procurements greater than \$3 million that have not been reserved exclusively for small business, the form shall be prepared for OSDBU approval.
- (4) Justification for Other than Full and Open Competition (if, applicable) – Include a copy of the completed JOFOC for actions \$25 million or less. For actions above this threshold, prepare the JOFOC as required by BOP-003.0304, entitled “Headquarters Approval of Contract Actions” to be approved concurrently with the waiver.
- (5) Limited sources justification (if, applicable) – Include a copy of the completed limited sources justification if required for orders to be placed under Federal Supply Schedules that are not excluded under Section 5.a.(9)).
- (6) Market Research – Summarize the market research approach, process, and findings commensurate with the size and complexity of the procurement using FAR 10.002 as a guide. Document results from 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. In addition, the market research shall provide recommendations to ensure that small businesses will participate in future awards of similar requirements to the maximum practical extent.
- (7) Other Documentation – Copies of all other documentation that has a direct bearing on the acquisition approach affecting the use of small business. Draft or final acquisition plans, Host Country Agreements, treaties, or congressional earmarks are examples to consider.

9. ANNUAL RECONCILIATION.

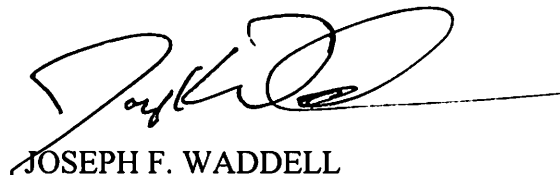
- a. To ensure compliance with this BOP, the designated SBPM shall conduct an annual review and reconciliation of awards made to other than small businesses over the simplified acquisition threshold as well as approved small business waivers. Any deficiencies shall be identified and recommendations made to improve policy conformance.
- b. The designated SBPM shall complete the fiscal year reconciliation within the first quarter of the following fiscal year. Copies of the reconciliation report shall be sent to the HQ SBPM.
- c. The HQ SBPM, or designee, shall conduct a Small Business Waiver review as part of an NNSA procurement review. The review will focus on the quality of Small Business Waivers and compliance with this BOP.

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10. REFERENCES.

- a. Department of Energy Acquisition Guide, Chapter 19, *Small Business Programs – An Overview*
 - b. Acting Administrator Linton F. Brooks memorandum of August 29, 2002, *NNSA Commitment to Small Business Programs*
 - c. Federal Acquisition Regulation Part 10, *Market Research*, Part 13, *Simplified Acquisition Procedures*, and Part 19, *Small Business Programs*
 - d. Department of Energy Acquisition Regulation Part 919, *Small Business Programs*
 - e. BOP 003.0305, *NNSA Small Business Policy*
 - f. BOP 003.0304, *NNSA Headquarters Approval of Contract Actions Process (CAP)*
11. CONTACT. Headquarters Small Business Program Manager, Office of Acquisition Management (NA-APM-10) 202-586-8304.

BY ORDER OF THE ADMINISTRATOR:



JOSEPH F. WADDELL
Senior Procurement Executive