



NNSA Policy Letter: BOP-003.0701

Date: June 5, 2007

TITLE: Small Business Waiver Process

I. OBJECTIVES:

- 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. Should the establishment of local implementing procedures be appropriate, consistency with this business operations policy shall be the governing principle.

II. APPLICABILITY:

- A. This Policy Letter 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 Policy Letter, 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, Blanket Ordering
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Agreements, Basic Agreements, letter contracts, bilateral modifications for new work, and other procurement actions.

III. 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-003.0305R).

IV. 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. Financial Assistance
 - 4. Awards made solely with non-appropriated funds
 - 5. All other contracts or agreements not subject to the Federal Acquisition Regulation (FAR)
 - 6. Task or Delivery Orders issued against a master contract that have been previously reviewed under the Small Business Waiver process
 - 7. Contracts awarded as a result of a Broad Agency Announcement
 - 8. Interagency agreements
 - 9. GSA orders placed under the Federal Supply Schedules Program to achieve agency socio-economic goals IAW GSA Acquisition Letter V-05-12
- 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

V. 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 IAW FAR Part 2.101; and,
 2. Effectively utilize market survey techniques IAW 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 \$1,000,000 shall be reviewed by the local Small Business Program Manager (SBPM) and approved by the procuring office's Head of the Contracting Activity (HCA).
- C. Small Business Waivers for contract actions over \$1,000,000 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.
- 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 Small Business Administration (SBA) shall review selected acquisitions not unilaterally set aside for small business.

VI. RESPONSIBILITIES:

- A. The Office of Acquisition and Supply Management (NA-63) 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, local coordination of Small Business Waiver requests, and provides assistance, upon request, in obtaining SBA concurrence on DOE F 4220.2. 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-63. 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 \$1,000,000.
- F. The procuring office's HCA shall approve Small Business Waivers above the simplified acquisition threshold up to \$1,000,000 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 Policy Letter;
 - 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 Policy Letter have been accomplished.

VII. 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 standard 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 procuring office HCA and 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 HCA.
3. Small Business Review Form (DOE F 4220.2) – Shall be included with required signatures. For procurements greater than \$3 million, 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-003.0304R5, entitled “Headquarters Approval of Contract Actions” to be approved concurrently with the waiver.
5. 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.
6. 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.

VIII. ANNUAL RECONCILIATION

- A. To ensure compliance with this Policy Letter, the Service Center Small Business Program Manager (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 Service Center 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 Service Center HCA and the HQ SBPM.

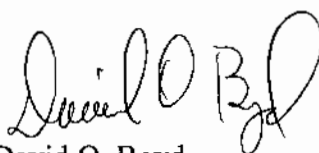
- C. The HQ SBPM, or designee, shall conduct a Small Business Waiver review as part of an NNSA procurement review. The review will focus on the quality of Small Business Waivers and compliance with this Policy Letter.

IX. REFERENCES

1. Acquisition Letter 2005-08 Revised, *Small Business Programs*
2. Acquisition Letter 2005-06, *Small Business Procurement Goals*
3. Acquisition Letter 2005-02, *Implementation of Fiscal Year (FY) 2005 Legislation Provisions*
4. Acting Administrator Linton F. Brooks memorandum of August 29, 2002, *NNSA Commitment to Small Business Programs*
5. Federal Acquisition Regulation Part 10, *Market Research*, Part 13, *Simplified Acquisition Procedures*, and Part 19, *Small Business Programs*
6. Department of Energy Acquisition Regulation Part 919, *Small Business Programs*
7. BOP 003.0305R, *NNSA Small Business Policy*

POINT OF CONTACT FOR ADMINISTRATION POLICY LETTER: Headquarters Small Business Program Manager, Office of Acquisition and Supply Management (NA-63) 202.586.8304.

BY ORDER OF THE SENIOR PROCUREMENT EXECUTIVE:



David O. Boyd
National Nuclear Security Administration