



October 1, 2009

Order of the Architect of the Capitol

Subject: Architect of the Capitol Procurement Manual Order 34-19-01, Small Business Set-Asides

Architect of the Capitol Order 34-19-01, Small Business Set-Asides, contains policy utilized in small business set-asides as implemented at the Architect of the Capitol. This Order is effective October 1, 2009.

A handwritten signature in black ink, which appears to read "Stephen Ayers". The signature is written in a cursive style and is positioned above a horizontal line.

STEPHEN T. AYERS, AIA, LEED AP
Acting Architect of the Capitol

9/14/09
Date

**AOC PROCUREMENT MANUAL
Small Business Set-Asides**

Chapter 34-19

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Subchapter 1 Small Business Set-Asides

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1. PURPOSE

- a. This order provides the policies and procedures for the use of small business set-asides for small purchases of \$100,000 or less for the procurement of supplies and services. For the purposes of this order, "services" shall include construction unless specifically noted otherwise.
- b. This order does not apply to transfers of funds or payments to other government agencies, AOC indefinite-delivery contracts, Federal agencies' Government-wide

indefinite-delivery contracts (GWACs), multi-agency contracts, and Federal Supply Schedule (FSS) contracts.

2. AUTHORITY

- a. 41 U.S.C. 5 (R.S. 3709), as amended by Public Law 108-7 (2 U.S.C. 1821), provides the Architect of the Capitol the authority, within available funds, to acquire supplies and services up to and including \$100,000 using small purchase procedures without advertising/publicizing the proposed contract action. Utilizing its procurement authority for small purchases, the Architect of the Capitol has the discretion to determine the manner in which small purchases are conducted, and has determined that this authority permits the use of small business set-asides for those requirements that utilize small purchase procedures, including purchase card transactions. This authority is also consistent with the authorities the Executive branch agencies have under the Federal Acquisition Streamlining Act (P.L. 103-355) and Federal Acquisition Regulation Part 13 to conduct small business set-asides.
- b. Unless specifically stated otherwise, the AOC shall --
 - (i) Apply the U. S. Small Business Administration's (SBA) definitions of small business concerns;
 - (ii) Utilize the SBA's expertise in establishing size standards used in Federal procurements;
 - (iii) Comply with the SBA's actions in all areas concerning size determinations, including accepting the SBA's Office of Hearings and Appeals (OHA) decisions and selection of a North American Industry Classification System (NAICS) code when one is not selected or properly selected by the AOC;
 - (iv) Comply with the SBA's decisions on protests concerning an offeror's representation as a small business concern;
 - (v) Accept the SBA's determinations of responsibility of a small business under the Certificate of Competency program in 13 CFR 125.5;
 - (vi) Comply with the SBA's determination of the eligibility of concerns to participate in a small business set-aside; and

- (vii) Utilize the SBA's class waivers and individual contract waivers under the nonmanufacturer rule.

3. RESPONSIBILITY

- a. The Chief Administrative Officer is the Head of the Contracting Activity and responsible for the overall procurement program at the AOC.
- b. The Director, Procurement Division, is responsible for managing the procurement functions, including those utilizing the government purchase card.
- c. The Chief, Procurement Policy Branch, is the AOC's Small Business Coordinator and responsible for coordination of outreach activities to small business concerns, program oversight of small business set-asides, and has the authority to approve or disapprove the use of other than small businesses for a specific requirement or class of requirements. This authority may be delegated in writing to Procurement Analysts in the Procurement Policy Branch.
- d. The contracting officers, including purchase cardholders, are responsible for using small business set-asides in compliance with this AOC Order.

4. DEFINITIONS

- a. "AOC Order" means an AOC document that establishes policy within the AOC.
- b. "Competition threshold" is the amount at which competition for a requirement must be solicited. The competition threshold for the AOC is greater than \$5,000.
- c. "Contracting officer", for the purposes of this order, shall include AOC purchase cardholders, purchasing agents, contract specialists, and any other individual employed by the AOC who has a delegation of contracting authority.
- d. "Industry" means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) code manual.
- e. "Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.

- f. "Small business set-aside" means a procurement that limits the participation to small business concerns.

5. POLICY

- a. All small purchases exceeding \$5,000 but \$100,000 or less that are not sole source shall be set-aside for small business concerns unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.
- b. Procurements of \$5,000 or less are not available for competition and, therefore, the requirement for obtaining two or more offers from small business concerns is not applicable. However, contracting officers must direct small purchases of \$5,000 or less to small business concerns to the maximum extent practicable.
- c. Contracting officers shall make reasonable efforts to identify and use small disadvantaged business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns for all procurements, including those not utilizing small business set-asides.
- d. Small purchases exceeding the competition threshold, including purchase card transactions, which do not propose to use a small business set-aside require the concurrence of the AOC's Small Business Coordinator on AOC Form 1901, Small Business Program Review, before award of the order. The contracting officer is responsible for providing the information necessary to support the position that a small business set-aside cannot be utilized. If concurrence is not received, a small business set-aside must be used.
- e. Small business set-asides are not applicable to small purchases made to entities outside the United States and its territories (Puerto Rico, American Samoa, Guam, the Federated States of Micronesia, Marshall Islands, Palau, Northern Mariana Islands, U. S. Virgin Islands, and U. S. Minor Outlying Islands (an aggregation of nine U. S. territories: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island)).

6. NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES AND SIZE STANDARDS

- a. The NAICS is a system of codes assigned by the U. S. Department of Commerce (DOC) to each major service and supply industry in the United States. The SBA establishes small business size standards on an industry-by-industry basis using the NAICS codes assigned by DOC (see 13 CFR Part 121). Size standards are based on revenue *or* number of employees. Assigning the proper NAICS code to a procurement is critical to the small business community, as it determines which businesses in the industry represented by the assigned NAICS code are considered large or small businesses and are, therefore, permitted to participate in a procurement utilizing a small business set-aside.
 - (i) The current NAICS code manual with descriptions of each industry is available at <http://www.census.gov/epcd/www/naics.html>.
 - (ii) The size standards assigned each NAICS code are available at <http://www.sba.gov/contractingopportunities/officials/index.html> under "Size Standards".
- b. All written Requests for Quotations (RFQs) for requirements exceeding the competition threshold and utilizing small purchase procedures must specify a NAICS code and provide the corresponding size standard. All contracting officers obtaining quotations orally must provide a NAICS code if requested by the SBA or a vendor. For size standard purposes, a product or service is classified in only one industry whose definition best describes the principal nature of the product or service being acquired, usually the component which accounts for the greatest percentage of contract value. Procurements for supplies must be classified under the appropriate manufacturing NAICS code.
- c. Questions regarding the selection of NAICS codes in AOC procurements should be referred to the Small Business Coordinator.
- d. The contracting officer's determination of the applicable NAICS code is final unless appealed to the SBA's OHA in accordance with 13 CFR 121.1102-1103.

7. NONMANUFACTURER RULE

- a. For small business set-asides, any concern proposing to furnish a product that it did not itself manufacture must furnish the product of a small business manufacturer. However, the SBA has the authority to grant either a waiver or

exception to the nonmanufacturer rule and in industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule.

- b. AOC small purchase procedures exceeding \$25,000 but \$100,000 or less are subject to the nonmanufacturer rule. SBA has exempted procurements from the nonmanufacturer rule if the procurement utilizes small purchase procedures and the anticipated cost of the procurement will not exceed \$25,000. The exception permits small business concerns to provide any domestic firm's product.
- c. The SBA may issue a class waiver for a class of products using the NAICS code for a specific industry.
 - (i) Current class nonmanufacturer rule waivers may be found at <http://www.sba.gov/aboutsba/sbaprograms/gc/programs/index.html> under "Waivers of the NonManufacturer Rule". If using an existing class nonmanufacturer rule waiver, the contracting officer must document the file with a copy of the list of approved nonmanufacturer waivers.
 - (ii) Waivers for a class of products may be requested by the Small Business Coordinator in accordance with 13 CFR 121.1204(a).
- d. An individual nonmanufacturer waiver can be requested for a specific procurement in accordance with 13 CFR 121.1204(b).
 - (i) To request an individual waiver, the contracting officer must submit the following information to the Small Business Coordinator –
 - (A) A definitive statement of the specific item to be waived and justification as to why the specific item is required;
 - (B) The RFQ number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history; and
 - (C) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items. The determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers

for the items and that no small business manufacturer or processor can reasonably be expected to offer the required item(s).

- (ii) The Small Business Coordinator shall submit the required information to the SBA. If SBA's research verifies that no small business manufacturers or processors exist for the item, the SBA will grant an individual, one-time waiver. If a small business manufacturing or processor is found for the product in question, the SBA will deny the request and the AOC shall accept the SBA's decision.

8. LOCATING SMALL BUSINESS SOURCES

- a. Requisitioners and contracting officers are responsible for the market research and documentation necessary to locate the small business sources needed to use a small business set-aside for an AOC procurement; however, the contracting officer is ultimately responsible for ensuring compliance with the requirements of this AOC Order.
- b. AOC employees can utilize the Central Contractor Registration (CCR) at www.ccr.gov to search for small businesses. AOC employees may utilize other available sources to locate small business concerns to be used for an AOC requirement; however, businesses identified by other than Federal sources must meet the Federal size standard for a small business concern.

9. PROCEDURES FOR SMALL BUSINESS SET-ASIDES

- a. Small purchases exceeding \$5,000 but \$100,000 or less shall be automatically set-aside for small business concerns unless one of the following exceptions applies:
 - (i) The requirement is a sole source procurement in which only one source can provide the supplies or services and a sole source justification is provided;
 - (ii) Market research has been conducted and strongly indicates that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices (see paragraph 11), quality, and delivery; or
 - (iii) The market survey indicates that no small business concerns possess the requisite capabilities.

- b. Requisitioners and contracting officers shall afford small business concerns the maximum practicable opportunity to participate in AOC procurements by structuring their requirements so that --
 - (i) Delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;
 - (ii) The maximum amount of time practicable for the submission of offers is allowed; and
 - (iii) Specifications, plans, and drawings with solicitations, or information as to where they may be obtained or examined, are furnished to all small business concerns expressing an interest.

- c. If a small business concern cannot be located for a requirement exceeding the competition threshold, the contracting officer must complete AOC Form 1901, Small Business Program Review, and submit it to the Small Business Coordinator in the Procurement Policy Branch for concurrence prior to obtaining full and open competition or awarding to the identified sole source vendor. Requests for exceptions regarding fair market prices from small business concerns must show evidence that the contracting officer complied with paragraph 11 of this order.
 - (i) If the Small Business Coordinator concurs with the findings that the procurement cannot utilize a small business set-aside, the procurement can proceed with the soliciting of competition or awarding to the identified sole source vendor.
 - (ii) If the Small Business Coordinator does not concur, the reason(s) for nonconcurrence shall be provided in writing to the contracting officer. The contracting officer cannot proceed with the procurement when the Small Business Coordinator does not concur on the AOC Form 1901.
 - (iii) Disputes between the contracting officer and the Small Business Coordinator shall be decided by the Chief Administrative Officer or his/her designee.
 - (iv) AOC Form 1901 and related documentation shall be maintained with the procurement file.

- d. Procurements exceeding \$25,000 for supplies, components, equipment, and other manufactured items that use small business set-asides are subject to the nonmanufacturer rule (see paragraph 7).
- e. Each written RFQ must contain the applicable North American Industry Classification System (NAICS) code and the related size standard (see paragraph 6). For oral quotations, including purchase card transactions, the contracting officer shall provide a NAICS code and size standard, if requested.
- f. Each written RFQ must include the provision AOC52.219-2, Small Business Program Representations and Certifications, and require that the successful vendor complete this provision before award can be made. Contracting officers using oral RFQs shall utilize the "Oral Requests for Quotations and Purchase Cardholder Tips" found at <http://aochome.aoc.gov/procurement/forms/index.cfm> to obtain and document information on the type of contractor.
- g. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a small business set-aside, the contracting officer must make an award to that small business concern. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside is automatically withdrawn; the requirement, if still valid, may be resolicited among all types of business concerns available; and the file documented to reflect this action. Concurrence by the Small Business Coordinator is not required when no offers are received.
- h. Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see paragraph 14).
- i. A contracting officer may proceed with award of a procurement after protest of a small business issue. However, the SBA must be notified of the intent to proceed prior to award of the order. The contracting officer shall notify the Small Business Coordinator of the intent to proceed with award at least five workdays prior to award of the order. The Small Business Coordinator is responsible for notifying the SBA.

10. DATA COLLECTION

The size representation provided by vendors is entered into the FMS vendor database by the Procurement Division. Any discrepancies between socio-economic data obtained on

the provision AOC52.219-2, Small Business Program Representation, or “Oral Requests for Quotations and Purchase Cardholder Tips” and the existing socio-economic data in the FMS vendor database must be reported to the Small Business Coordinator for resolution.

11. DETERMINATION OF FAIR MARKET PRICE

- a. Any award resulting from a small business set-aside shall be made at a fair market price. A fair market price from a small business is a price within a range that a reasonable and prudent business person would pay and is not necessarily the lowest price available.
- b. Determination of fair market price can be based upon –
 - (i) Comparison of proposed prices received during competition;
 - (ii) Comparison of previously proposed prices and previous Government and commercial contract prices with the current proposed prices;
 - (iii) Use of parametric estimating methods/applications of rough yardsticks, such as dollars per pound, per horsepower, or other units;
 - (iv) Comparison with competitive published price lists, published market prices of commodities, and similar pricing structures;
 - (v) Comparison of proposed prices with independent Government estimates;
or
 - (vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.
- c. If using an independent Government estimate to determine fair market price and the prices from small business concerns do not appear reasonable compared to the Government estimate, the requisitioner or contracting officer shall contact the small business concerns to determine the reason for the discrepancy. Frequently, differences in prices between the independent Government estimate and the small business concerns’ prices are the result of discrepancies in the scope of work envisioned by the Government and small business concerns or the Government’s inadequate description of supplies/components/equipment. If this occurs, contracting officers shall take the necessary action to correct the discrepancy,

including, if necessary, issuing an amendment to the RFQ and obtaining new pricing from all vendors initially solicited.

12. DETERMINATION OF RESPONSIBILITY AND CERTIFICATE OF COMPETENCY PROGRAM

- a. If an AOC contracting officer determines that a low small business offeror is not responsible, then the contracting officer must refer the small business to the SBA for a Certificate of Competency.
- b. Any referral to the SBA's Certificate of Competency Program will be in accordance with 13 CFR 125.5.
- c. Contracting officers may contact the AOC's Small Business Coordinator for assistance.

13. WITHDRAWING A SMALL BUSINESS SET-ASIDE

- a. If, before award of an order involving a small business set-aside, the contracting officer considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may request that the small business set-aside be withdrawn and the procurement solicited among all business types. However, the contracting officer must submit AOC Form 1901, Small Business Program Review, to the Small Business Coordinator and include all relevant and pertinent information to support a withdrawal of the individual small business set-aside.
- b. If the Small Business Coordinator does not agree to a withdrawal, the matter shall be referred to the Chief Administrative Officer or his/her designee for resolution.
- c. All documentation relating to the withdrawal of a small business set-aside shall be maintained in the procurement file.

14. PROTESTING A SMALL BUSINESS REPRESENTATION

- a. To be eligible for award as a small business concern, a vendor must represent in good faith that it is a small business at the time of its certification and representation. The contracting officer shall accept a vendor's representation that it is a small business unless another vendor or interested party challenges the concern's small business representation or the contracting officer has reason to question the representation.

- b. Interested parties (the contracting officer, any offeror which the contracting officer has not eliminated for reasons unrelated to size, or other parties as identified in 13 CFR 121.1001) may protest the size status as represented by an offeror or request a formal size determination of an offeror. Formal size determination appeals by other than the AOC contracting officer shall be processed in accordance with 13 CFR 121. AOC contracting officers must submit requests for formal size determinations to the AOC's Small Business Coordinator. The Small Business Coordinator is responsible for submission of the request for a formal size determination to the SBA.
- c. An offeror's representation that it is a small business is not binding on the SBA. If an offeror's small business status is challenged, the SBA will evaluate the status of the concern and make a determination as to whether the offeror is a small business. Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and rejected by the AOC contracting officer after receipt of an SBA determination on the size status.

15. REPORTING REQUIREMENTS

- a. Contracting officers shall comply with any data collection and reporting instructions necessary to measure the AOC's small business accomplishments. In general, the methodologies used shall be automated to the fullest extent possible. The Small Business Coordinator has the authority and responsibility for issuing any data collection and reporting instructions.
- b. On a semi-annual basis, the Small Business Coordinator shall provide to the Architect an agency-wide report that measures the socio-economic accomplishments for small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns. Data from all small purchase procedures of \$100,000 or less are included in the report.

16. RESCISSIONS

None.

17. REFERENCES

13 CFR Part 121
13 CFR Part 125

13 CFR Part 124
13 CFR Part 126