

USE OF THE SMALL BUSINESS PROGRAMS TO DETERMINE APPROPRIATE SET-ASIDES

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®

US Army Corps of Engineers
BUILDING STRONG®



FY 10 SMALL BUSINESS GOALS

<u>Prime Contract Goals:</u>	<u>GOAL</u>	<u>ACTUAL</u>
Small Business Set-Aside	33%	0%
Small, Disadvantaged Business	18*%	0%
HUBZone Small Business	10%	0%
Women-Owned Small Business	5.8%	0%
Service-Disabled Veteran-Owned Small Business	3%	0%
Historically Black Colleges & Universities/Minority Institutions	13%	0%

*- 8(a) awards fall under Small, Disadvantaged Business

Actual: As of _____



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SET-ASIDE PROGRAMS

Small Business Set-Aside

8(a) Set-Aside

HUBZone Set-Aside

Service-Disabled Veteran-Owned SB Set-Aside

Women Owned SB Set-Aside



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SET-ASIDES FOR SMALL BUSINESS

Acquisition of supplies or services that has an anticipated dollar value exceeding \$3,000 but not over \$100,000 is:

- Automatically reserved exclusively for small business concerns and shall be set aside for small business 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
- If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase IAW PIL 2009-03.
- If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm
- If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn with SB coordination and the requirement, if still valid, shall be resolicited on an unrestricted basis



“The Rule of 2”

The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that:

- Offers will be obtained from at ***least two responsible small business concerns*** offering the products of different small business concerns (but see paragraph (c) of this subsection); and
- ***Award will be made at fair market prices.*** Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides)

Although past acquisition history of an item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists.



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“The Non-Manufacturing Rule”

For small business set-asides other than for construction or services, any concern proposing to furnish a product that it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has granted either a waiver or exception to the nonmanufacturer rule (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see 19.102(f)(4) and (5)). In addition, **SBA has excepted procurements processed under simplified acquisition procedures (see Part 13), where the anticipated cost of the procurement will not exceed \$25,000, from the nonmanufacturer rule.** Waivers permit small businesses to provide any firm’s product. The exception permits small businesses to provide any domestic firm’s product. In both of these cases, the contracting officer’s determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.



“Self Performance”

By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

- *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
- *Supplies (other than procurement from a nonmanufacturer of such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
- *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
- *Construction by special trade contractors.* The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.



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Small Business Set-Aside Requirements

- Contracts between \$3,000 and \$150,000 must be reserved exclusively for small business – exceptions under FAR 13.003
- Set-aside
- Competitive Demonstration Program prohibits the use of small business set-asides in Designated Industry Groups (DIGs list) (FAR 19.10 and DFARs 219.10), Unless waived
- Self-Certifying Program
- Exception: Emerging Small Business = a firm who is $\geq 50\%$ of size standard
 - \$30,000 or less for construction, landscaping and pest control services
 - \$50,000 or less for A/E services
 - Not subject to the DIGs list



HUBZone Set-Aside Requirements

- 51% owned and controlled by US citizens, Community Development Corps, Alaska Native Corporations or Indian tribes
- Principal Office located in a HUBZone
- At least 35% of employees must reside in a HUBZone
- Set-aside
- SBA-Certifying Program
- Definition
 - Located in a qualified census tract
 - Located in a qualified “non-metropolitan” county
 - Located in the boundaries of federally recognized Indian reservations
 - Located in the boundaries identified under BRAC (losing facilities)



Service-Disabled, Veteran-Owned Set-Aside Requirements

- 51% owned and controlled by one or more service-disabled veterans
- Management such as daily business operations are controlled by one or more service-disabled veterans, spouse or permanent care provider
- Service-Disabled Veteran-Owned Small Business Set Aside
- Self-Certifying Program



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HBCU/MI Set-Aside

- HBCUs - Established in 1980 - DFARs 226 – DOD Program
- List: <http://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html>
- Rothe vs. DoD – No longer allowed to set-aside educational dollars to HBCU/MIs



Other Small Business Programs

- Small, Disadvantaged Business
 - No set-aside program
 - Price Evaluation Adjustment is suspended
 - Self-certifying program

- Women-Owned Small Business
 - NAICS codes 9281—National Security and International Affairs
 - 3328—Coating, Engraving, Heat Treating, and Allied Activities
 - 3371—Household and Institutional Furniture and Kitchen Cabinet Manufacturing
 - 4412—Other Motor Vehicle Dealers



8(a) Set-Aside Requirements

- 51% directly and unconditionally owned by socially and economically disadvantaged individual(s)
- 8(a) set-aside for \$3,500,000.00 and above – FAR 6.204 - No justification or determination and findings required
- 8(a) sole source under \$3,500,000.00 – FAR 6.302-5 waives justification and approval requirements
- Program lasts 9 years
- SBA-Certifying Program



8(a) Business Development Program

- Before deciding to set-aside an acquisition, the KO should review the acquisition for offering under the 8(a) program. Priority is given to HUBZone 8(a) firms first.
- Selecting acquisition for the 8(a) program
 - SBA issues a search letter of a firm's capabilities and asks the agency to identify acquisition to support her firm's business plans
 - SBA issues a requirements letter, identifying a specific requirement and requests the agency to offer it to the 8(a) program
 - The agency may offer it to 8(a) program via market research or a firm's self-marketing efforts



8(a) Business Development Program

- Evaluation - The agency is to evaluate the following for offerings to 8(a) program
 - Quantities required or number of construction projects planned
 - Performance or delivery requirements
 - The agencies current and future plans to acquire work same or similar in nature
 - Problems encountered in previous acquisitions with 8(a) firms
 - The impact of any delay in delivery
 - Previous work been acquired using Small Business set-asides
 - Any other pertinent information



8(a) Business Development Program

➤ Offering and Acceptance – If the requirement is deemed suitable for the 8(a) program, the following occurs:

➤ The agency issues an offering letter to the 8(a) program

(1) For competitive 8(a) requirements and those sole source requirements for which no specific Participant is nominated (i.e., open requirements) other than construction requirements, to the SBA district office serving the geographical area in which the procuring activity is located;

(2) For competitive and open construction requirements, to the SBA district office serving the geographical area in which the work is to be performed or, in the case of such contracts to be performed overseas, to the Office of 8(a) BD located in SBA Headquarters;

(3) For sole source requirements offered on behalf of a specific Participant, to the SBA district office servicing that concern.



8(a) Business Development Program

➤ Offering and Acceptance – If the requirement is deemed suitable for the 8(a) program, the following occurs:

➤ SBA Acceptance of offering letter

➤ SBA determines whether to accept the requirement into the 8(a) program

➤ 100K Threshold – SBA has 5 working days to respond

➤ Less 100K Threshold – No offering letter is required. Agency must notify SBA 2 working days in advance of award.

➤ 100K Threshold – non response from SBA may elevate to the Associate Administrator of the 8(a) program or on 6th day may proceed

➤ Less 100K Threshold – KO assumes acceptance from SBA



8(a) Business Development Program

- Pricing the 8(a) Contract – If the requirements are as follows:
 - KO shall price the 8(a) contract in accordance with Subpart 15.4
 - If required, SBA shall obtain cost or pricing data from contractor
 - The agency shall provide audit assistance to SBA to the extent available
 - An 8(a) contract, sole source or competitive may not be awarded if the price of the contract results in a cost to the agency which exceeds a fair market price
 - SBA may request data used to estimate the fair market price within 10 working days
 - The negotiated contract price and estimate fair market price are subject to the concurrence of the SBA – Disagreement, SBA may appeal



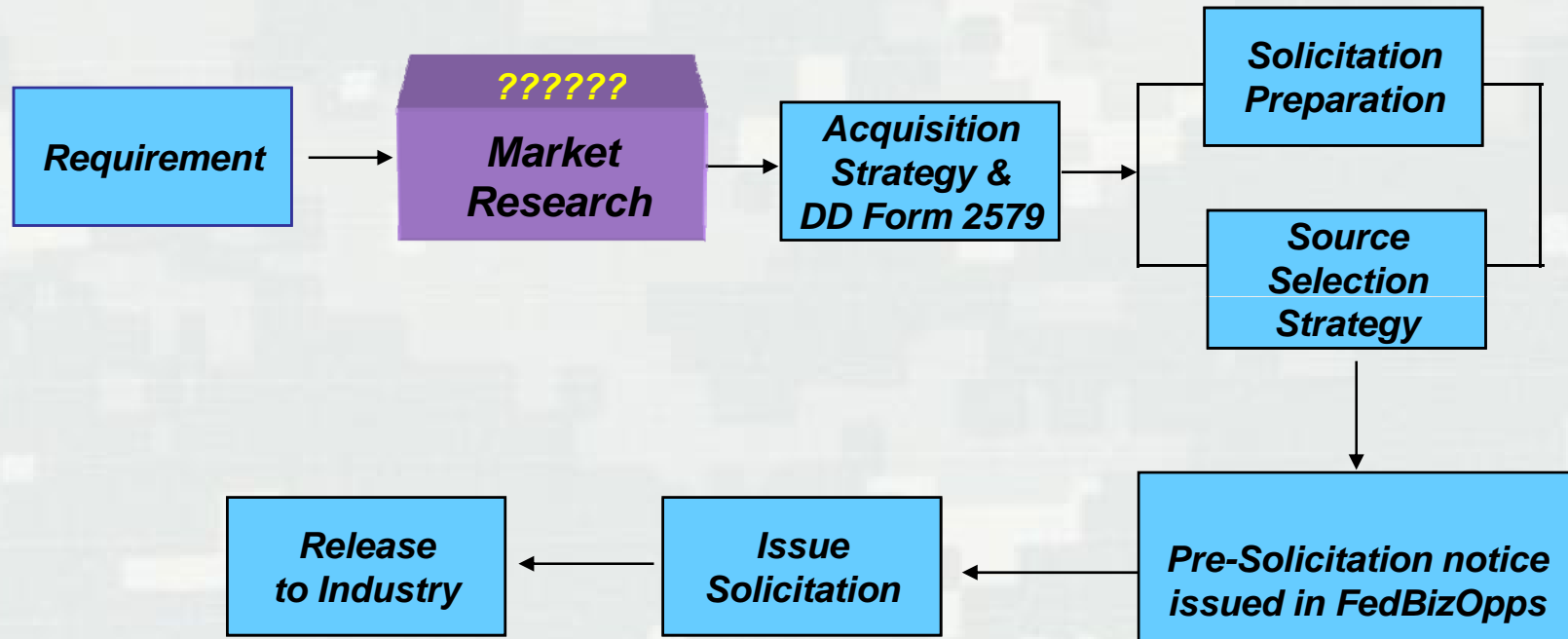
Set-Aside Reference

FAR PART 19
DFARs PART 219
FAR CLAUSE 52.219-14

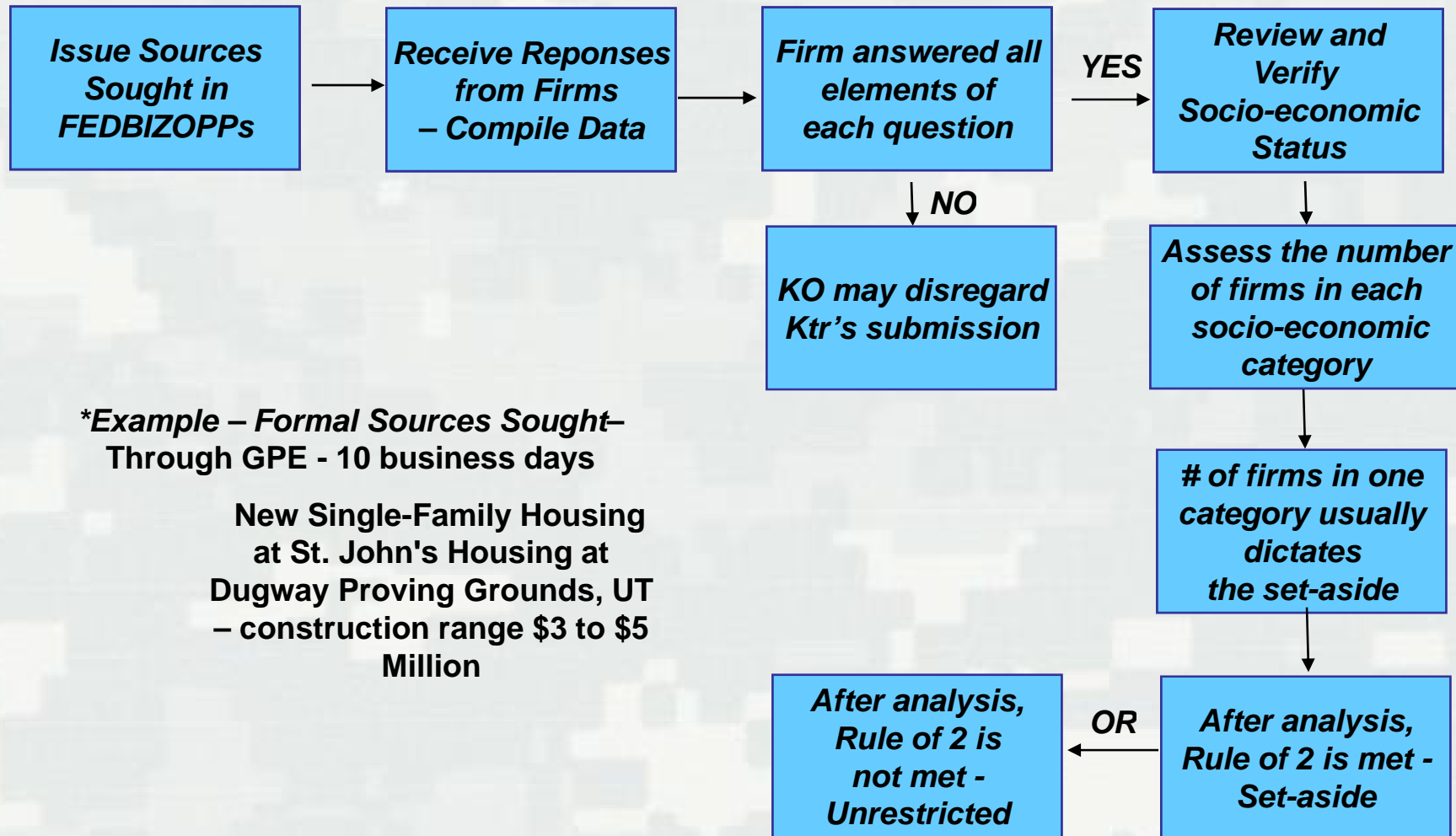


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ACQUISITION SEQUENCE



MARKET RESEARCH*



**Example – Formal Sources Sought–
Through GPE - 10 business days*

**New Single-Family Housing
at St. John's Housing at
Dugway Proving Grounds, UT
– construction range \$3 to \$5
Million**



SBA INVOLVEMENT

The Small Business Administration provides the following services to Agencies:

- Size Determinations
- Certificates of Competency (COC)
- Subcontracting Assistance
- Prime Contracting Assistance
 - 8(a) – Authority held at District Offices
 - HUBZone – Authority held at SBA HQ
 - SDVOSB – Authority held at SBA HQ
 - Procurement Center Representatives (PCR)



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SBA INVOLVEMENT

PCRs are located at over 40 installation nationwide. They have liaison responsibilities and resident responsibilities.

Their duties are as follows:

- Review proposed acquisitions to recommend—
 - The setting aside of selected acquisitions not unilaterally set aside by the contracting officer,
 - New qualified small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business sources, and
 - Breakout of components for competitive acquisitions.



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- Review proposed acquisition packages provided in accordance with 19.202-1(e). If the SBA PCR believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. The recommendation shall be made to the contracting officer within 15 days after receipt of the package.
- Recommend concerns for inclusion on a list of concerns to be solicited in a specific acquisition.
- Appeal to the chief of the contracting office any contracting officer's determination not to solicit a concern recommended by the SBA for a particular acquisition, when not doing so results in no small business being solicited.



SBA INVOLVEMENT

- Conduct periodic reviews of the contracting activity to which assigned to ascertain whether it is complying with the small business policies in this regulation.
- Sponsor and participate in conferences and training designed to increase small business participation in the contracting activities of the office.
- Attends the Overall Acquisition Strategy Board
- Provides comments on Subcontracting Plans
- Reviews DD2579
- Protest on NON-8(a) procurements – 8(a) protests are at District Office

