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Order 34-19-01



Order of the Architect of the Capitol

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

Architect of the Capitol Procurement Manual Chapter 34-19-01, Small Business Preference Programs, contains general policy and information utilized in small business preference programs implemented at the Architect of the Capitol and is effective upon the date signed by the Architect.

STEPHEN T. AYERS, AIA
Acting Architect of the Capitol

Date

AOC PROCUREMENT MANUAL
Small Business Programs

Chapter 34-19

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Subchapter 1 Small Business Preference Programs

1. PURPOSE

- a. This order provides the general policy and information for the use of small business preference programs implemented at the Architect of the Capitol 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 procurements that do not utilize small purchase procedures, transfers of funds or payments to other government agencies, indefinite-delivery contracts awarded by the AOC or other Federal agencies, or orders to foreign sources.

2. AUTHORITY AND RESPONSIBILITY

- a. 41 U.S.C. 5 (R.S. 3709), as amended by Public Law 107-068, provides the Architect of the Capitol the authority, within appropriated and available funds, to acquire supplies and services up to and including \$100,000 using small purchase procedures without prior advertising. Utilizing its procurement authority for small purchases, the Architect of the Capitol has the discretion to determine the manner in which small purchase procedures are conducted and determined that this authority permits the use of small business programs for those requirements that utilize small purchase procedures, including purchase card transactions.
- b. The Chief Administrative Officer, as Head of the Contracting Activity, is responsible for the overall procurement program at the AOC. The Director, Procurement Division, is responsible for managing the small business contracting functions, including those utilizing the government purchase card. The Chief, Procurement Policy Branch, is designated as the Small Business Coordinator and is responsible for coordination of outreach activities to small business concerns, oversight of the use of any implemented small business programs, 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 to Procurement Analysts in the Procurement Policy Branch.

- c. Unless specifically stated otherwise, this order shall be construed as the AOC's recognition of the authority of the U. S. Small Business Administration (SBA) to establish definitions of the various small business concerns and their respective programs; administer small business programs; establish size standards to be used in Federal procurements; make size determinations on protests concerning an offeror's representation as a small business concern; determine the eligibility of concerns to participate in small business programs; and issuance of class waivers and individual contract waivers under the nonmanufacturer rule.
- d. The AOC has the authority to receive and make final and binding determinations on a NAICS code designation or NAICS code appeal used in an AOC procurement. This authority resides with the AOC, rather than the SBA, in order to preserve a separation of powers between the Executive Branch and Legislative Branch.
- e. The AOC has the authority to make determinations as to the responsibility of the potential small business contractor. This authority resides with the AOC, rather than the SBA, in order to preserve a separation of powers between the Executive Branch and Legislative Branch.
- f. Unless authorized by a law that is specifically applicable to the AOC, this order prohibits the participation of other than small businesses in an AOC procurement that utilizes a small business preference program.
- g. This order provides for general policy applicable to two or more small business preference programs but does not, in itself, establish a specific small business preference program. Each small business preference program shall be established by a separate AOC Order.

3. DEFINITIONS

- a. "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.
- b. "Small business preference program" means a program that excludes the participation of types of contractors that are not small business concerns from the procurement and award of a government requirement. Types of contractors typically

excluded include large businesses, nonprofit organizations (universities, charitable organizations, etc.), and state and local governments. However, certain small business preference programs exclude other types of small business concerns that are determined to not be of the specific type of small business for which the preference program was designed.

- c. “Industry” means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>).
- d. “Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business concern under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).
- e. “AOC Order” means an AOC regulatory document that establishes policy within the AOC. The first two digits of an AOC Order denotes the AOC organization with responsibility for the order. Orders beginning with “34” are the responsibility of the Procurement Division. The third and fourth digits correspond to the numbering structure of the Federal Acquisition Regulation. The fifth and sixth digits are sequential identifying numbers.

4. POLICY

- a. For the purposes of this order, “contracting officer” shall include AOC purchase cardholders, purchasing agents, contract specialists, and any other individual employed by the AOC who has a delegation of contracting authority.
- b. All procurements exceeding the AOC’s competition threshold of \$5,000 that utilize small purchase procedures, including purchase card transactions, shall use small business preference program(s) implemented within the AOC provided that any competition or other requirements established in the specific small business preference program are or are likely to be met. If more than one small business preference program is established, there shall be no order of priority established for use of any program.
- c. Contracting officers shall direct small purchases at or below the competition threshold to small business concerns to the maximum extent practicable. Contracting officers shall make reasonable efforts to identify and use small business, small disadvantaged business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns for these procurements.

- d. Small purchases exceeding the competition threshold, including purchase card transactions, that do not propose to use a small business preference program 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 preference program cannot be utilized. If concurrence is not received, a small business preference program must be used. A copy of the completed AOC Form 1901 must be maintained in the procurement file.
- e. Small business programs are not applicable to orders made to entities outside the United States, District of Columbia, 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).

5. NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES AND SIZE STANDARDS FOR BUSINESSES

- 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 U. S. Small Business Administration (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 for services *or* number of employees for supplies/equipment. 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 preference program.
 - (1) The current NAICS code manual with descriptions of each industry is available at <http://www.census.gov/epcd/www/naics.html>.
 - (2) The size standards assigned by the SBA to each NAICS code are available at <http://www.sba.gov/services/contractingopportunities/sizestandardstables/ableofsize/index.html> under "Table of 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 issuing oral requests for quotations or otherwise obtaining quotations orally must provide a

NAICS code if so requested. 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. When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

6. APPEALING A NAICS CODE

- a. The contracting officer's determination of the applicable NAICS code is final unless appealed. However, only an adversely affected party may appeal a NAICS code designation on an AOC procurement. Appeals of NAICS code designations in an AOC procurement shall be made to:

Architect of the Capitol
Small Business Coordinator, Procurement Policy Branch
Ford House Office Building
2nd and D Streets SW
Washington, DC 20515
(202) 225-3221 (facsimile)

- b. An appeal from a contracting officer's NAICS code designation and applicable size standard must be served and filed on the AOC's Small Business Coordinator and the AOC contracting officer within 10 calendar days after the issuance of the initial RFQ or any amendment designating the NAICS code or five calendar days prior to the due date for quotations, whichever is earlier. Untimely NAICS code appeals will be dismissed.
- c. Methods of service shall include express mail, hand delivery, or facsimile. Facsimile service is strongly encouraged. Within three calendar days of receipt of the appeal, the Small Business Coordinator shall notify the interested party in writing of the time and date of receipt of the appeal.
- d. The appeal must include the RFQ number; the name, address, and telephone number of the contracting officer; a full and specific statement as to why the NAICS code designation is alleged to be in error, together with argument in support thereof; and the name, address, telephone number, e-mail address, facsimile number, and signature of the appellant or its attorney.
- e. Upon receipt of a NAICS code appeal, the Small Business Coordinator shall assign a case number and notify the contracting officer and appellant of receipt of the appeal and when a decision is anticipated. The contracting officer shall postpone the due

date for quotations until a decision is rendered by the Small Business Coordinator. The contracting officer's response to the appeal must include the RFQ and any related documents, argument, and supporting evidence and be received within 10 calendar days after receipt of notice of the appeal from the Small Business Coordinator. The Small Business Coordinator may supplement this information with historical records or payment history obtained from other sources, including the appellant or other offerors. AOC Jurisdictions and organizations shall fully cooperate and provide all existing records requested by the Small Business Coordinator. Failure of the appellant to provide requested and relevant information shall result in the dismissal of the appeal. Generally, all parties from whom information is requested must provide the information within 7 calendar days of the request.

- f. The Small Business Coordinator shall issue a decision and inform all interested parties, including the appellant and contracting officer. If the Small Business Coordinator designates a NAICS code that is different than the NAICS code designated by the AOC contracting officer, the RFQ shall be amended to reflect the new NAICS code designated by the Small Business Coordinator and any affected offerors shall be provided the opportunity to correct their size representation.
- g. The Small Business Coordinator's decision on the appeal of a NAICS code designation is effective on the date of issuance and not subject to any other review or judicial process.

7. 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 preference program for an AOC procurement; however, the contracting officer is ultimately responsible for ensuring compliance with the requirements of the applicable AOC Order for small business preference programs.
- b. AOC employees can utilize the Central Contractor Registration (CCR) at www.ccr.gov to search for small businesses. Instructions for the use of CCR are available at <http://aochome.aoc.gov/procurement/forms/index.cfm>. AOC employees may utilize other available Federal government sources to locate small business concerns to be used for an AOC requirement.
- 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 or non-concurrence prior to obtaining competition or award 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 9 of this order.

- (1) If the Small Business Coordinator concurs with the findings that the procurement cannot utilize a small business preference program implemented at the AOC, then the procurement can proceed with soliciting of competition or award to the identified sole source vendor.
- (2) If the Small Business Coordinator does not concur, the reason(s) for nonconcurrence shall be provided in writing to the contracting officer.
- (3) Disputes between the contracting officer and the Small Business Coordinator shall be decided by the Chief or Deputy Chief Administrative Officer.
- (4) AOC Form 1901 shall be maintained with the procurement file.

8. DATA COLLECTION

- a. All written Requests for Quotations shall 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 requests for quotations 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.
- b. Information provided by vendors shall be 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 shall be reported to the Small Business Coordinator for resolution.

9. 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. Determination of fair market price can be based upon --

- (1) Comparison of proposed prices received during competition;
 - (2) Comparison of previously proposed prices and previous Government and commercial contract prices with the current proposed prices;
 - (3) Use of parametric estimating methods/applications of rough yardsticks, such as dollars per pound, per horsepower, or other units;
 - (4) Comparison with competitive published price lists, published market prices of commodities, and similar pricing structures;
 - (5) Comparison of proposed prices with independent Government estimates; and
 - (6) Comparison of proposed prices with prices obtained through market research for the same or similar items.
- b. 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.

10. 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. The exception is if a specific preference program requires that the contracting officer verify the status in a Federally maintained database.
- b. Interested parties (the contracting officer, any offeror whom 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 shall contact the Small Business Coordinator prior to requesting a formal size determination by 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.

11. NONMANUFACTURER RULE

- a. 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. 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. SBA has exempted procurements from the nonmanufacture rule if the procurement utilizes small purchase procedures and the anticipated cost of the procurement will not exceed \$25,000. The exception permits small businesses to provide any domestic firm's product. AOC small purchase procedures exceeding \$25,000 but \$100,000 are subject to the nonmanufacturer rule. Waivers to the nonmanufacturer rule permit small businesses to provide any firm's product.
- c. The SBA may issue a class waiver for a class of products using the NAICS code for a specific industry. Class nonmanufacturer rule waivers may be found at http://www.sba.gov/aboutsba/sbaprograms/gc/programs/gc_waivers_nonmanufacturer.html under "List of Approved NonManufacturer Waivers". If using a class nonmanufacturer rule waiver, the contracting officer shall document the file with a copy of the list of approved nonmanufacturer waivers.
- d. An individual nonmanufacturer waiver can be requested for a specific procurement. The contracting officer shall submit the following information to the Small Business Coordinator –
 - (1) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

- (2) The RFQ number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history; and
- (3) A determination by the contracting officers 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 items).
- (4) The Small Business Coordinator shall submit the required information to the SBA's Associate Administrator for Government Contracting. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Associate Administrator for Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the request. The AOC shall accept the SBA's decision.

12. DETERMINATION OF RESPONSIBILITY

- a. AOC contracting officers have the authority to make responsibility determinations of a potential contractor. In order to be determined responsible, a prospective contractor must --
 - (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
 - (2) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - (3) Have a satisfactory performance record;
 - (4) Have a satisfactory record of integrity and business ethics;
 - (5) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
 - (6) Have the necessary production, construction, and technical equipment or

facilities, or the ability to obtain them; and

- (7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations. Presence of the small business concern on <http://www.epls.gov/> shall automatically render the concern ineligible for award with no appeal to the AOC.
- b. If a contracting officer determines that a small business concern is not responsible for any reason other than the presence of the concern on <http://www.epls.gov/>, the contracting officer shall --
- (1) Notify the small business concern in writing of this determination and include in the notification –
 - (A) That any appeal to the nonresponsibility determination must be made within five calendar days after receipt of the notice by the small business concern;
 - (B) That the small business must submit any appeal via facsimile or electronically to the Architect of the Capitol, Small Business Coordinator, Ford House Office Building, Room H2-264, 2nd and D Streets SW, Washington, DC 20515; facsimile (202) 225-3221; e-mail smallbusiness@aoc.gov; and
 - (C) Withhold award until the appeal time for the nonresponsible determination to the AOC's Small Business Coordinator has lapsed.
- c. It is the responsibility of the small business concern to verify that the appeal has been received by the AOC Small Business Coordinator.
- d. After receipt of the appeal, the Small Business Coordinator shall review the information utilized by the contracting officer to determine if relevant and pertinent information was obtained and utilized and that good judgement was exercised. Contracting officers shall cooperate fully with requests for information by the Small Business Coordinator.
- e. If the Small Business Coordinator determines that relevant and pertinent information was obtained and utilized and that good judgement was exercised, the Small Business Coordinator shall notify the small business concern in writing of this determination and include in the notification that the decision is final and no further appeal is allowed.

- f. If the Small Business Coordinator determines that relevant and pertinent information was not obtained and utilized or that good judgement was not exercised, the Small Business Coordinator shall notify the contracting officer in writing of the deficiencies found in the process and require that a new responsibility determination be made that does not rely upon the deficiencies cited. The small business concern shall be notified of the status of the appeal. Any second and new responsibility determination requires the concurrence by the Small Business Coordinator. The Small Business Coordinator shall notify the small business concern of the results of the new responsibility determination. If the small business concern is found to be responsible, award can be made. If the small business concern is found not responsible, award can be made to another offeror. Any determination made as a result of an appeal is final and not subject to further review or appeal.

13. REPORTING REQUIREMENTS

- a. Contracting officers shall comply with any data collection and reporting instructions necessary to measure agency accomplishments on the use of small business preference programs and the types of contractors awarded small purchases. In general, the methodologies used shall be automated to the fullest extent possible. The Small Business Coordinator has the authority and responsibility for issuing data collection and reporting instructions.
- b. On a quarterly 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. The report shall also be provided on the AOC's Small Business Program web site.