
15 U.S. Code § 644

Awards or contracts

(a) Small business procurements

(1) In general

For purposes of this chapter, small business concerns shall receive any award or contract if such award or contract is, in the determination of the Administrator and the contracting agency, in the interest of—

- (A) maintaining or mobilizing the full productive capacity of the United States;
- (B) war or national defense programs; or
- (C) assuring that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category (as defined under paragraph (2)) are awarded to small business concerns.

(2) Industry category defined

(A) In general

In this subsection, the term “industry category” means a discrete group of similar goods and services, as determined by the Administrator in accordance with the North American Industry Classification System codes used to establish small business size standards, except that the Administrator shall limit an industry category to a greater extent than provided under the North American Industry Classification System codes if the Administrator receives evidence indicating that further segmentation of the industry category is warranted—

- (i) due to special capital equipment needs;
- (ii) due to special labor requirements;
- (iii) due to special geographic requirements, except as provided in subparagraph (B);
- (iv) due to unique Federal buying patterns or requirements; or
- (v) to recognize a new industry.

(B) Exception for geographic requirements

The Administrator may not further segment an industry category based on geographic requirements unless—

- (i) the Government typically designates the geographic area where work for contracts for goods or services is to be performed;
- (ii) Government purchases comprise the major portion of the entire domestic market for such goods or services; and
- (iii) it is unreasonable to expect competition from business concerns located outside of the general geographic area due to the fixed location of facilities, high mobilization costs, or similar economic factors.

(3) Determinations with respect to awards or contracts

Determinations made pursuant to paragraph (1) may be made for individual awards or contracts, any part of an award or contract or task order, or for classes of awards or contracts or task orders.

(4) Increasing prime contracting opportunities for small business concerns

(A) Description of covered proposed procurements

The requirements of this paragraph shall apply to a proposed procurement that includes in its statement of work goods or services currently being supplied or performed by a small business concern and, as determined by the Administrator—

- (i) is in a quantity or of an estimated dollar value which makes the participation of a small business concern as a prime contractor unlikely;
- (ii) in the case of a proposed procurement for construction, seeks to bundle or consolidate discrete construction projects; or
- (iii) is a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

(B) Notice to procurement center representatives

With respect to proposed procurements described in subparagraph (A), at least 30 days before issuing a solicitation and concurrent with other processing steps required before issuing the solicitation, the contracting agency shall provide a copy of the proposed procurement to the procurement center representative of the contracting agency (as described in subsection (l)) along with a statement explaining —

- (i) why the proposed procurement cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;
- (ii) why delivery schedules cannot be established on a realistic basis that will encourage the participation of small business concerns in a manner consistent with the actual requirements of the Government;
- (iii) why the proposed procurement cannot be offered to increase the likelihood of the participation of small business concerns;
- (iv) in the case of a proposed procurement for construction, why the proposed procurement cannot be offered as separate discrete projects; or
- (v) why the contracting agency has determined that the bundling of contract requirements is necessary and justified.

(C) Alternatives to increase prime contracting opportunities for small business concerns

If the procurement center representative believes that the proposed procurement will make the participation of small business concerns as prime contractors unlikely, the procurement center representative, within 15 days after receiving the statement described in subparagraph (B), shall recommend to the contracting agency alternative procurement methods for increasing prime contracting opportunities for small business concerns.

(D) Failure to agree on an alternative procurement method

If the procurement center representative and the contracting agency fail to agree on an alternative procurement method, the Administrator shall submit the matter to the head of the appropriate department or agency for a determination.

(5) Contracts for sale of government property

With respect to a contract for the sale of Government property, small business concerns shall receive any such contract if, in the determination of the Administrator and the disposal agency, the award of such contract is in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(6) Sale of electrical power or other property

Nothing in this subsection shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Federal Government.

(7) Costs exceeding fair market price

A contract may not be awarded under this subsection if the cost of the contract to the awarding agency exceeds a fair market price.

(b) Placement of contracts by contracting procurement agency

With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c) Programs for blind and handicapped individuals

(1) As used in this subsection:

(A) The term “Committee” means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of title 41.

(B) The term “public or private organization for the handicapped” has the same meaning given such term in section 632(e) of this title.

(C) The term “handicapped individual” has the same meaning given such term in section 632(f) of this title.

(2)

(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed \$40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 8503 of title 41.

(3) The Administrator shall monitor and evaluate such participation.

(4)

(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct

labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

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