

## **3.6 SMALL BUSINESS PROGRAMS**

### **3.6.1 APPLICABILITY**

The policies contained herein are applicable to TSA procurements for goods and services and those procurements using purchase cards, and convenience checks, but excludes utilities, real property, and intergovernmental agreements.

### **3.6.2 POLICY**

TSA will follow the spirit and intent of the Small Business Administration in its procurement actions, even though it is not subject to the Small Business Act. TSA recognizes that small businesses are of vital importance to job growth and the economic strength of the country and value that they bring to the market place. TSA shall implement and aggressively strive to provide attainable and reasonable opportunities to small business (SB), veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business (HUBZone), small disadvantaged business (SDB), and woman-owned small business (WOB) concerns to participate as prime contractors and subcontractors for the goods and services procured by TSA.

TSA policy is to ensure the following priority in all its procurement actions:

- First, consider small business prime contracts;
- Second, if the first option has been ruled out based on market research, consider small business teams or joint ventures; and
- Third, if the first and second options have been ruled out based on market research, turn to full and open competition where large businesses are expected to serve as prime contractors. In these cases, subcontracting with small businesses and the use of the DHS Mentor-Protégé Program will be critical.

TSA's small business program consists of an active approach to promoting diversity in all of its business relationships and encouraging economic development through the following:

- Competitive and single source set-asides;
- Measurable prime contracting and subcontracting goals;
- Vigorous outreach efforts;
- Mentor-Protégé Program;
- Support of TSA's small business liaison officers.

### **3.6.3 Standards for Small Businesses Programs**

TSA will utilize the standards for determining ownership and size that are maintained and published by the Small Business Administration (SBA). The Small Business Program Office will assist in determining when standards are met in coordination with SBA.

### **3.6.4 Responsibilities**

Integrated project teams (consisting of at least a program manager, budget specialist, contracting officer, and small business specialist or small business liaison officer) are responsible for the effective implementation of the TSA's small business programs, including achieving program goals.

#### **3.6.4.1 Integrated Project Team's Responsibilities**

The following integrated project team, as led by the Program Manager, has the following responsibilities regarding small business programs.

- Take all reasonable action to increase small business participation in the TSA's procurements (including subcontracts);
- Consider the feasibility of breaking out requirements to increase opportunities for small businesses to successfully compete for prime contracts;
- Consider the extent of small business participation in contract performance during acquisition planning;
- Obtain guidance from the Small Business Program Office as it relates to small business utilization issues, by including a small business specialist or small business liaison officer on the integrated project team or by coordinating with the Small Business Office.
- Participate and assist in the development of small business conferences and outreach efforts sponsored by the OSBU.

#### **3.6.4.2 TSA's Small Business Program Office Responsibilities**

The Small Business Office maintains a direct working relationship with the procurement teams. When appropriate, the Small Business Office interacts with all procurement teams in the following areas to provide support and ensure effective and consistent program implementation:

- Participates in procurement workshops to increase access to and award of TSA's contracts to small businesses; Participates in acquisition procurement planning meetings and other scheduled meetings with the procurement team as advisors; Identifies potential small businesses that qualify for a particular procurement;
- Provides the procurement team with source lists of small businesses;
- Ensures that the source selection criteria used to select firms for award is fair, consistent and does not limit opportunities for small businesses;
- Provides advertising recommendations to the integrated products teams to ensure all requirements are being advertised in media accessible to small businesses; Responds to written and telephone inquiries from small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals regarding procurement opportunities with TSA;
- Reviews and approves TSA 200 forms and source lists to ensure an adequate

representation of small businesses;

- Reviews questions presented at conferences, preparing answers to questions submitted by small businesses, interacting with the integrated product teams for distribution of responses to all potential contractors;
- Reviews business declarations and accompanying documentation;
- Reviews subcontracting plans;
- Ensures that small businesses and small businesses owned and controlled by a socially and economically disadvantaged individuals are entered into the Small Business Program Office database;
- Assists in the proposal evaluation process as a non-voting member of the evaluation team;
- Verifies reported business ownership categories, by conducting reviews of databases, interviews, or on-site pre-award verifications.
- Small Business Office will participate in debriefing of small businesses as necessary.

#### **3.6.4.2.1 Small Business Liaison Officers (SBLOs)**

Small Business Liaison Officers will assist the Small Business Office to promote opportunities for small businesses to participate as prime and subcontractors in contracts awarded by TSA, consistent with efficient contract performance. SBLOs promote stronger communications and build better partnerships between each program office and the Small Business Office by:

- Participating in Small Business Fairs and Vendor Sessions when requested to do so by the Small Business Office.
- Ensuring that appropriate responses are provided to questions and unsolicited proposals submitted by small businesses.
- Attending and encourage staff participation in small business training.
- Ensuring that every procurement request in excess of \$200,000 is accompanied by a fully executed Set-Aside Review form, TSA Form-200.
- Ensuring that all requirements less than \$200,000 are set-aside for small business concerns. In circumstances where small businesses cannot be used, ensure that adequate documentation stating the reasons for not setting aside for small business are provided to the contracting officer. These instances should be the exceptions and not the norm.
- Ensuring timely and accurate input to TSA's Procurement Forecast. Ensure this information is reviewed and updated periodically to reflect new requirements.

#### **3.6.5 Acceptance of Procurement Requests**

For acquisitions anticipated to exceed \$200,000, the program office shall coordinate with the TSA Small Business Office as soon as requirements are defined to identify opportunities for small businesses and small disadvantaged business concerns. TSA Form 200 must

accompany every purchase request over \$200,000.

Program Managers shall consider recommendations of the Small Business Office, and when not following the Small Business Office's recommendation the Program Manager will obtain approval from the Chief System Support Officer (CSSO) and as applicable, the cognizant investment review board.

Contracting officers shall work in unison with the Small Business Office, and shall not process procurement requests that have not been approved by a Small Business Specialist or the Chief Systems Support Officer (CSSO). Contracting officers will document the rationale for utilizing or not utilizing small business in the business clearance memorandum.

Senior management shares responsibility for effectiveness of the acquisition process, including supporting achieving program goals. Senior management has a direct responsibility for taking affirmative steps to include small businesses, in all the preference categories specified, in the procurement actions within their purview, so that the Agency can meet its overall small business goals.

Requirements that were previously procured through the small business program, but are being proposed for re-procurement outside of the small business program, shall be supported by a written justification describing a rational basis of removal from the small business program.

#### **3.6.5.1 Funding of Procurement Requests**

The Chief Financial Officer may withhold funding to proceed with award if no potential interest of small business firms are included in the procurement process.

### **3.6.6 PRINCIPLES FOR THE SMALL BUSINESS PROGRAM**

#### **3.6.6.1 Program Goals**

Prior to the end of each fiscal year, measurable annual TSA wide major procurement program goals (including subcontracting goals) shall be established to provide attainable and reasonable opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and woman-owned small business concerns to participate in contracts awarded by the TSA for the next fiscal year. When feasible, TSA opportunities for small businesses will be identified in a publicized DHS procurement forecast.

#### **3.6.6.2 Reports to the Administrator**

To ensure attainment of the program goals, senior management shall be held accountable and goal achievement shall be monitored at all levels of the agency. Quarterly Small Business participation reports will be submitted to the Administrator, Deputy Administrators, and Deputy Assistant Administrators to maximize visibility and program support.

### **3.6.3 Procurement Forecast**

Procurement forecasts will be done annually to make expected contract opportunities available to small business concerns. The forecast will summarize the annual acquisition plans prepared by each program office. Program managers shall maintain procurement forecasts. Updates shall be prepared for contracting opportunities valued over the simplified acquisition parameter. DHS OSDBU will publicize TSA's forecast on its website at [www.dhs.gov/openforbusiness](http://www.dhs.gov/openforbusiness). TSA Small Business Office will be the point of contact for any questions that industry may have. The publication of this document will assist the small business community by providing advanced notice of TSA's procurement plans for the Fiscal Year.

### **3.6.7 Prime Contracting with Small Businesses**

Each procurement of goods or services having an anticipated dollar value up to \$200,000, is automatically reserved exclusively for small businesses. If a procurement less than \$200,000 cannot be set-aside for small business, the requiring official must prepare a statement providing reasons for dissolving the automatic set-aside. This statement must have the written concurrence of the contracting officer, the small business liaison officer and the small business program office. A fully executed TSA Form 200 must accompany purchase requests expected to exceed \$200,000. Each contract for goods or services having an anticipated dollar value above \$200,000 should also be set-aside for small businesses whenever there are three or more small businesses that are competitive in terms of market prices, quality, and delivery.

#### **3.6.7.1 Categories of Small Businesses Set-Asides**

Contracting officers may partially or fully set-aside contracts for small businesses. Set-asides include competitive set-asides, and single source awards under socio-economic programs. Competitive contracts may be set-aside for the following:

- small business community at large;
- small disadvantaged business concerns (SDB);
- small businesses located in Historically Under-utilized Business Zones (HUBZone Businesses);
- serviced disabled veteran-owned small businesses (SDVOSB); or
- Federally recognized Native American Tribe or an Alaska Native Corporation

Contracting officers may open competition further when no responsive offers are received. Contracting Officers may set-aside contracts under multiple small business categories for one procurement, (i.e. SDB, HUBZone, SDVOSB). Set-asides may not be made for woman-owned businesses.

#### **3.6.7.2 Socio-Economic Program Single-Source Awards**

When the anticipated total value of a contract (including all options) is \$5 million or below for procurements assigned manufacturing North American Industry Classification System (NAIC) codes and \$3 million or below for all other procurements, then that contract may be noncompetitively awarded to the following businesses:

- small disadvantaged business concerns (SDB) that are certified by the SBO;
- small businesses located in Historically Under-Utilized Business Zones (HUBZone Businesses) for any dollar value;
- service disabled veteran-owned small businesses (SDVOSB); or
- businesses owned by Federally recognized Native American Tribe or an Alaska Native Corporation for any dollar value.

Where a contract is anticipated to exceed the noncompetitive threshold, it may be awarded on a noncompetitive basis if there is not a reasonable expectation that at least two or more sources from the set-aside category will submit offers that are in the Government's best interest in terms of quality, price and/or delivery. Vendors being considered socio-economic program single source award shall submit a declaration of business ownership category.

### **3.6.7.3 Declaration of Business Ownership Category**

Vendors that are being considered for contract award must certify their belonging to a business ownership category or categories by completing the Business Declaration Form. The reporting of a business category is subject to the Truth in Negotiations Act, and businesses filing false certifications are subject to criminal prosecution. Unless challenged, the Contracting Officer will accept the certification as proof that a vendor belongs to the reported business category(ies). If a business ownership category is challenged, then the Contracting Officer will forward the challenged status to the Small Business Program Office for final resolution. Responses to a set-aside SIR from a vendor not belonging to the set-aside business ownership category will be deemed non-responsive, and will not be considered for contract award. When the use of subcontracts will be utilized in performance of a contract, the vendor will collect and submit to the contracting officer a Business Declaration Form for each of the potential subcontractors.

### **3.6.7.4 Approval of Socio-Economic Program Single Source Award**

Socio-economic single source awards will be approved through TSA's Small Business Program Office. Program managers will identify a contract as a socio-economic single source award on the TSA Form 200 and submit to the Small Business Program Office for approval. The Small Business Program Office will research the request, verify the reported business ownership category of the suggested source, and forward the approval or rejection back to the Program Manager. Once approved by a Small Business Specialist from the Small Business Program Office, the Contracting Officer may commence the single source procurement.

Contracting officers may commence with socio-economic single source awards when the small business program office has not responded to the request within 10 days. In these instances the contracting officers shall review the declaration of business ownership category to verify appropriate business ownership category and shall check appropriate government database (CCR, VA, etc).

To provide opportunities to challenged identified vendors business ownership categories, the CO will post on FedBizOpps the intent to award a single source award based on identified socio-economic single source award. Pending successful resolution of any challenge to the business ownership category, the contracting officer may proceed with socio-economic single source award within five days.

### **3.6.7.5 Verification of Reported Business Ownership Category**

TSA reserves the right to review and verify each firm's program eligibility. If the firm is not a small business as defined by SBA's North American Industry Classification (NAIC) code size standards, it will not qualify as a small business.

a. A successful small business program rests with TSA's ability to limit participation to bona fide small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals for they are the intended recipients of the agency's procurement dollars earmarked for small business set-asides.

b. To that end, the business declaration is:

(1) A tool used to ensure that the small business program benefits only those businesses that are bona fide small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals by establishing a basis for determining a firm's eligibility to participate in a small business set-aside; and

(2) A tool used internally by the SBO to accurately report awards made to small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals.

TSA will follow SBA for determining and reporting small business size and ownership.

### **3.6.8 Indian Incentive Program**

Alaska Native organizations or Native American-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by TSA. In fulfilling this requirement, an incentive program may be established that may be equal to 5% of the amount paid, or to be paid, to a qualifying subcontractor or supplier that is an - Alaska Native organizations or Native American-owned economic enterprise.

### **3.6.9 Mentor –Protégé Program**

TSA will participate in the DHS Mentor-Protégé Program in accordance with the policies of the DHS OSDBU. The Mentor-Protégé Program encourages TSA large business prime contractors to provide mutually beneficial development assistance to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantage business, and woman–owned small business concerns. The program is designed to improve the performance of TSA contracts and subcontracts, foster the establishment of long-term business relationships between prime contractors and small business subcontractors, and strengthen subcontracting opportunities and accomplishments through incentives.

#### **3.6.9.1 Incentives for Mentor Participation**

Mentors may receive additional evaluation points for Mentor Protégé participation toward the award of contracts during the evaluation of competitive offers.

Mentors may receive credit toward attaining subcontracting goals contained in their TSA subcontracting plan(s) for Mentor-Protégé participation on a dollar for dollar basis by counting protégé development assistance costs in their various small business subcontracting categories. A ceiling on allowable developmental costs shall be established at time of contract award.

#### **3.6.1.3.8 Contract Bundling**

Integrated Project Teams will not bundle contracts without a sound rational basis. Integrated Project Teams shall seek alternatives to the practice of contract bundling and help mitigate the effects of any necessary and justified contract bundling.

- Contracting officers shall perform market research when bundled requirements are anticipated.
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements in accordance with DHS guidance.

#### **3.6.1.3.9 Subcontracting with Small Businesses**

TSA small business subcontracting program includes:

- Collection and negotiation of reasonable subcontracting plans
- Preference for incentives to contractors for meeting subcontracting goals.

- Collection of subcontracting reports SF-294/295.
- Verification of subcontracting plan implementation through audits and report reviews.

To ensure that the maximum use of small businesses as subcontractors is promoted, Integrated Project Teams shall, to the maximum extent practicable, include a source selection evaluation factor related to small business participation in TSA solicitations. Proposals shall be evaluated in terms of the total value of the proposed subcontracting effort as it relates to the total value of the prospective contract and the meaningfulness and substantiveness of the work to be performed.

#### **3.6.1.3.10 Subcontracting Plans**

Prime contractors shall submit subcontracting plans for acquisitions exceeding \$2,000,000 before award of the contract unless formally waived by the contracting officer for urgent and compelling business reasons. The subcontracting plan shall specify the relative identification of the small businesses to be utilized and the extent of the contractual commitment between the prime and the subcontractor to be evaluated. Prime contractors must submit the plans with their proposals, and the contracting officer must approve plans before contract award.

Small Business Office will assist contracting officers in evaluating and negotiating acceptable plans, obtain necessary advise and assistance from DHS OSDBU, and monitor contractor's performance through collection and analysis of required reports. The review will include recommendations regarding acceptance or rejecting of the plans. If the plan is incomplete or otherwise unsatisfactory, the Small Business Specialist, contracting officer, and the prime contractor shall work together to negotiate an acceptable plan. The SBC will monitor prime contractors' compliance with subcontracting plans and conduct compliance reviews of prime contractors' subcontracting programs.

#### **3.6.1.3.11 Types of Subcontracting Plans**

**Individual contract plan:** a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

**Master plan:** a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

**Commercial plan:** a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items (supplies or services) sold by either the entire company or a portion (e.g., division, plant, or product line).

### **3.6.1.3.12 Subcontracting Incentive Program**

TSA will utilize positive incentives to the maximum extent practicable, and devise monetary penalties for prime contractors who fail to meet stated goals. The contractor shall give preference to SB, SDB, WOB, HUBZone, VOSB and SDVOSB to the maximum extent practicable and consistent with the efficient performance of the contract for all subcontract awards.

The contracting officer should encourage increased subcontracting opportunities for SDB concerns in negotiated acquisitions by providing monetary incentives. Monetary incentives shall be based on actual achievement as compared to proposed monetary targets for SDB subcontracting. A total of up to 5% of the subcontract's award amount may be paid for meeting subcontracting goals. If the Contractor exceeds its target for subcontracting goals to small business concerns, it can receive up to 5% of the dollars in excess of the subcontracting value of the contract, unless the Contracting Officer determines otherwise.

Contracting Officers will negotiate revised goals and incentives/disincentive, and modify the contract accordingly as necessitated by increased/decreased contract changes or other circumstances. Prior to award, the contracting officer must ensure sufficient funding is obligated for payment of subcontracting award incentives.

Source Selection Organizations may use a single source selection evaluation factor or sub factor that will primarily be used to evaluate SDB participation in subcontracts.

### **3.6.1.3.13 Price Evaluation Adjustment for Small Disadvantaged Businesses**

Contracting Officers shall consider price evaluation adjustments for small disadvantaged businesses. This mechanism can be used in competitive acquisitions over the simplified acquisition parameter where the NAICS code for the prime contract is one in which the Dept. of Commerce has authorized the use of this benefit. The PEA cannot be used if it would cause the award to be made at a price that exceeds fair market price by more than the factor determined by the Dept. of Commerce. An SDB that winds a contract as a result of the PEA is subject to the "limitations in subcontracting" rule and must perform no less than 50% (supplies and services) of the contract itself.

### **3.6.1.3.14 Price Evaluation Preference for HUBZone Small Business Concerns**

Contracting Officers shall consider price evaluation preference for HUBZone small business concerns in acquisitions using full and open competition that are anticipated to be greater than the simplified acquisition parameter. Contracting officers may give offers from HUBZone small business concerns a price evaluation preference by adding a factor up to 5

percent to all offers. The preference shall not be used—

- Where price is not a selection factor so that a price evaluation preference would not be considered;
- Where all fair and reasonable offers are accepted (*e.g.*, the award of multiple award schedule contracts).

#### **3.6.1.3.15 Cascading Procurement Strategy for Small Disadvantaged Businesses**

To ensure that every opportunity is afforded to small disadvantage business or SDVOSB concerns to participate in large and/or consolidated procurements, contracting officers shall make any award made on a competitive basis to eligible small disadvantage business or SDVOSB, provided that a minimum of two competitive (technical and cost) offers are received.

If a minimum of two offers from qualified small disadvantaged businesses or SDVOSB are not received for the goods and services specified within the solicitation, the award would be made on the basis of full and open competition form among all responsible businesses submitting offers.