

OFPP Policy Letter 99-1



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON D.C. 20503

October 8, 1999

OFPP Policy Letter 99-1 on Small Business Procurement Goals

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP)

ACTION: Notice of final policy directive; rescission of OFPP Policy Letter 91-1

SUMMARY: OFPP is issuing OFPP Policy Letter 99-1 which contains guidance on implementing government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. The goals for each of these small business categories are stated as a percentage of overall Federal procurement dollars. The policy letter also provides guidance on reporting requirements that will help the Small Business Administration (SBA) determine whether executive agencies are reaching these goals. This policy letter supersedes OFPP Policy Letter 91-1. As a result of comments received following publication of the proposed policy letter in the *Federal Register* on April 2, 1999 (64 FR 16003), we are making minor changes to the policy letter as follows: (1) the title of the policy letter is shortened to read: "Small Business Procurement Goals"; (2) a new subparagraph is added in Section 6 to make clear that -- in addition to working with each agency to establish goals for awarding prime contracts -- SBA also negotiates with the agencies goals for subcontract awards made by prime contractors; and (3) the last sentence in Section 7a.2 is revised to make clear that an agency's narrative report should include plans for improvement if the agency fails to achieve their small business goals.

EFFECTIVE DATE: November 8, 1999

FOR FURTHER INFORMATION CONTACT: Michael Gerich or Keith Coleman, OFPP, at 202-395-3501. To obtain a copy of this policy letter, please log on to the Acquisition Reform Network at: www.arnet.gov/References/Fwd_Index.html.

SUPPLEMENTARY INFORMATION:

A. Background

We issued an earlier Policy Letter, 91-1, entitled "Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts" on March 11, 1991. That policy letter addressed sections 502 and 503 of the Business Opportunity Development Act of 1988. Section 502 establishes goals for contract awards to small business concerns and small disadvantaged businesses. Section 503 requires the President to include the agencies' actual goal achievements in the "State of Small Business" report. The report also includes an analysis of an agency's failure to achieve the goals, and the number and dollar value of prime contracts awarded to small firms through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards.

We need to issue this new policy letter because of statutory changes made in 1994 and 1997. Section 7106 of the Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. Section 603 of the Small Business Reauthorization Act of 1997 increases the annual government-wide goal for prime contract awards to small business concerns from not less than 20 percent to not less than 23 percent. The Act also adds a 3 percent HUBZone small business goal phased-in over the next 5 years.

This policy letter supports SBA's policies of establishing its own guidance on the goals by: (1) establishing with each agency separate goals for prime contracts and subcontracts in each of the small business categories; (2) establishing for each agency goals for awards made under section 8(a) of the Small Business Act; (3) requiring use of Federal procurement data in the Federal Procurement Data System (FPDS) to measure goal achievements rather than requiring agencies to provide this information in separate reports; and (4) requiring that, prior to the beginning of each fiscal year, SBA mutually establish with each agency goals for each of the small business categories.

B. Comments

We received fourteen letters in response to the request for comments on proposed OFPP Policy Letter 99-1 (64 FR 16003; April 2, 1999). A summary of the main issues and concerns raised in the comments follows:

1. *Comment.* OFPP should cancel this policy letter because it is unnecessary since SBA issues its own guidance.

Response: This policy letter supports SBA's comprehensive policy guidance on establishing with each agency mutually acceptable prime and subcontract goals to implement statutory goaling requirements. The policy letter provides, among other things, guidance to implement the statutory five percent goals for small disadvantaged businesses (SDBs) and women-owned small businesses. The Small Business Act requires a goal of at least five percent for the combination of prime and subcontract awards. To implement this requirement, the policy letter establishes a separate five percent goal for prime

contracts and a separate five percent goal for subcontracts for these two small business categories. This policy helps to promote small disadvantaged business and women-owned small business participation in federal contracting, and ensures easy and reasonable tracking of data to measure goal achievements. Therefore, we believe it is essential to issue this policy letter.

2. *Comment:* The policy letter should not impose mandatory goals for HUBZones until SBA certifies a significant number of HUBZone small businesses. Some commenters suggested that we consider an alternative phase-in process or rely on self-certification to implement the HUBZone goals.

Response: Section 603 of the Small Business Reauthorization Act of 1997 (Public Law 105-135) requires the three percent HUBZone small business goal to be phased in over five years beginning with one percent of prime contract awards to be awarded to such firms in fiscal year 1999. In addition, section 603 requires prime contractors to establish goals for subcontracts with HUBZone small businesses. While we realize that only a small number of HUBZone small businesses have been certified by SBA, the statute does not provide the authority to implement alternative dates. Further, the statute requires SBA to certify HUBZone small business concerns and maintain a list of all qualified firms. Therefore, agencies and prime contractors may not rely on self-certification to determine the status of HUBZone small business concerns.

3. *Comment:* For sake of brevity, the title of the policy letter should be shortened.

Response: We will change the title to read "Small Business Procurement Goals."

4. *Comment:* The chart in section 6b. of the policy letter that lists the statutorily-required goals and percentages should include all reportable goaling categories -- even those without a statutorily established percentage, such as prime 8(a) awards and small business subcontract awards.

Response: The primary purpose of the policy letter is to provide guidance to implement the statutory government-wide small business goals, including goals for SDBs, women-owned small businesses, and HUBZone small business concerns. While agencies must negotiate with SBA goals for 8(a) prime awards and subcontract goals for each small business category, we believe the charts in sections 6b. and 6c. should be limited to implementation of the statutory government-wide goals. However, we will add a new subparagraph in section 6 to make clear that agencies must establish goals for subcontract awards to small businesses, SDBs, women-owned small businesses, and HUBZone small businesses.

5. *Comment:* Section 6e. of the policy letter indicates that agencies may count prime contract awards to small businesses toward more than one goal. This practice has historically been recognized as "double counting" and may provide opportunities for inaccuracies. This section should be clarified to indicate how "double counting" may be utilized.

Response: The policy letter recognizes that the government-wide small business goal of 23 percent includes all the goals for the specific categories of small businesses. Therefore, agencies may count awards to small businesses toward more than one goal. We do not view this as "double counting" since the goals for each small business category are a subset of the overall small business goal. SBA's "Guidelines on Goals Under Procurement

6. *Comment:* Section 7a.(2) of the policy letter should be clarified to require "plans for improving performance" only from agencies that fail to meet their goals.

Response: Section (h)(2)(C) of the Small Business Act requires the SBA Administrator to include in the report to the President an analysis of why the government-wide goals or any individual agency goals were not met. The commenter suggests that section 7a.(2) should make clear that an agency's narrative report should include plans for improvement if the agency fails to achieve their goals. If the agency achieves its goals, the narrative report would not include a plan for improvement. We will revise the last sentence in section 7a.(2) to clarify this point.

7. *Comment:* The policy letter correctly emphasizes the importance of accurate and complete prime and subcontract data in the Federal Procurement Data System (FPDS) since SBA uses FPDS data to measure an agency's small business goal achievements. However, agencies should have timely and easy access to their FPDS data. There should be a government-wide standard for which agencies can take small business credit when ordering from another agency's contract. Also, there should be an initiative to improve the quality and reporting of subcontracting data.

Response: We realize that providing agencies with easy access to their FPDS data would help to improve the quality of the data. We are working with GSA's Federal Procurement Data Center, which operates the FPDS, to provide agencies easier on-line access to their data. Currently, the FPDC does provide agencies with reports of their data upon request. We have drafted government-wide policy that would allow agencies to take small business credit when ordering from another agency's contract, e.g., Federal Supply Schedules, government-wide agency contracts, and multi-agency contracts. When finalized, this guidance should help to improve the FPDS data and permit an agency to properly reflect its level of small business participation. We also agree that there should be an initiative to improve the subcontracting data collection process. In that regard, we plan to work with SBA and the Procurement Executives Council to identify problem areas where improvements can be made.

8. *Comment:* The second bullet in section 7b.(4)(ii) of the policy letter should read "competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals" to coincide with the requirements of section 503 of Public Law 100-656, Presidential Reports on Contracting Goals. As currently written, it seem to imply that agencies have the authority to set-aside acquisitions for SDBs, a statutory authority that has been superseded by the provisions in FAR Part 19 which allow for price evaluation adjustments.

Response: Throughout the policy letter, we refer to "small business concerns owned and controlled by socially and economically disadvantaged individuals" as "small disadvantaged businesses." We are using procurement mechanisms like price evaluation adjustments set forth in FAR Part 19 instead of set-asides for small disadvantaged businesses. However, competition restricted to small disadvantaged businesses also includes competitive 8(a) awards. We do not believe the policy letter should be changed.

Deidre A. Lee

Administrator

POLICY LETTER 99-1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Small Business Procurement Goals

1. Purpose

This policy letter provides guidance to Executive Branch departments and agencies on government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses and women-owned small businesses ("small businesses"). It also provides guidance on reporting requirements that will help the Small Business Administration (SBA) determine whether agencies are reaching these goals.

2. Supersession Information. This policy letter replaces OFPP Policy Letter 91-1, "Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts," dated March 11, 1991, which is rescinded.

3. Authority. This policy letter is based on the Small Business Act, the Office of Federal Procurement Policy Act, the Business Opportunity Development Reform Act of 1988, the Federal Acquisition Streamlining Act of 1994, and the Small Business Reauthorization Act of 1997.

4. Background. The Small Business Act requires executive agencies, in consultation with SBA, to develop annual goals for contract awards to small businesses. SBA monitors agency performance and reports their achievements to the President. The Office of Federal Procurement Policy Act, 41 U.S.C. 405, empowers the Administrator for Federal Procurement Policy to prescribe government-wide procurement policies.

The Business Opportunity Development Reform Act establishes government-wide goals for small businesses and small disadvantaged businesses and requires the President to include the agencies' actual goal achievements in the "State of Small Business" report. The report must also include an analysis of any failure to achieve the goals, and the number and dollar value of prime contracts awarded to small businesses through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards. The Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. The Small Business Reauthorization Act of 1997 (SBRA) adds a 3 percent HUBZone small business goal phased-in over the next 5 years. It also increases the annual government-wide goal for prime contract awards to small business concerns to not less than 23 percent.

In March 1991, the OFPP issued Policy Letter 91-1 to implement government-wide goals for small businesses and small disadvantaged businesses. This policy letter includes the guidance from Policy Letter 91-1, and also implements the more recent statutory provisions of FASA and SBRA.

This policy letter also supports the Small Business Administration's (SBA) policies of establishing its own guidance on the goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than requiring agencies to provide this information in separate reports.

5. **Policy.** Prior to the beginning of each fiscal year, SBA will mutually establish with each agency goals for participation by small business, small disadvantaged business, HUBZone small business, and women-owned small businesses. The agencies' cumulative goals shall count toward accomplishment of the government-wide goals.

6. **Goals.**

a. The government-wide small business goal is not less than 23 percent of the total value of all prime contracts awarded for the fiscal year. This includes all the goals for the specific categories of small business.

b. The following table lists the specific goals for small disadvantaged and women-owned small businesses.

The goal for...	is ...
small disadvantaged business prime contracts	not less than 5 percent of the value of all prime contract awards.
small disadvantaged business subcontracts	not less than 5 percent of the value of all subcontract awards.
women-owned small business prime contracts	not less than 5 percent of the value of all prime contract awards.
women-owned small business subcontracts	not less than 5 percent of the value of all subcontract awards.

For FY...	the percentage goal is at least...
1999	1 percent of the value of all prime contract awards
2000	1.5 percent of the value of all prime contract awards
2001	2 percent of the value of all prime contract awards
2002	2.5 percent of the value of all prime contract awards
2003 and after	3 percent of the value of all prime contract awards

d. There is no specific statutory requirement to establish goals for awards made pursuant to section 8(a) of the Small Business Act. However, agencies must mutually establish with SBA acceptable goals for awards to 8(a) firms.

e. Agencies must mutually establish with SBA acceptable goals for prime contract awards as well as subcontract awards by prime contractors to small businesses, small disadvantaged businesses, women-owned small businesses, and HUBZone small businesses.

f. Agencies may count prime contract awards to small businesses toward more than one goal. Prime contract awards to small businesses, women-owned small businesses, small disadvantaged businesses, 8(a) firms, and HUBZone small businesses count toward the government-wide small business goal.

7. Responsibilities.

a. Agency Responsibilities

(1) Each department or agency must negotiate annually in good faith with SBA to establish its specific prime and subcontract goals for small business, woman-owned small business, small disadvantaged business, HUBZone small business, and 8(a) firms. These goals should provide the maximum practicable opportunity for all these categories of small businesses to participate in contracts let by the agency. SBA's annual guidance on establishing small business goals, entitled "Guidelines on Goals Under Procurement Preference Programs," covers the goal-setting process.

(2) At the end of the fiscal year, each agency must submit a narrative report to SBA analyzing its achievements and any failures to achieve its small business goals for the year. If an agency fails to achieve its goals, the report also must include plans for improving performance in the next year.

(3) Agencies must ensure that their prime and subcontract data in the Federal Procurement Data System is accurate and complete in order to measure their small business goal accomplishments.

b. SBA Responsibilities

(1) Prior to the beginning of each fiscal year, SBA will work with each agency to establish mutually acceptable prime and subcontract goals for the different categories of small business.

(2) SBA must ensure that the mutually established cumulative goals for all agencies meet or exceed the government-wide small business goal of 23%.

(3) SBA must compile and analyze agencies' achievements against their individual small business procurement goals and report the results to the President.

(4) SBA will use data in the Federal Procurement Data System to determine:

(i) agencies' success in reaching their procurement goals for prime contracts and subcontracts;
(ii) the number and dollar value of prime contracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns through:

- noncompetitive negotiation,
- competition restricted to small disadvantaged business concerns,
- competition restricted to small business concerns and HUBZone small business concerns, and
- unrestricted competitions;

(iii) the dollar value of subcontracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

8. Information Contact. Direct any questions regarding this policy letter to Michael Gerich or Keith Coleman, OFPP, 202-395-3501.

9. Effective Date. The policy letter is effective 30 days after issuance.

Deidre A. Lee

Administrator