



GSA Federal Acquisition Service

November 9, 2011

FAS INSTRUCTIONAL LETTER 2012-01

MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES

FROM: HOUSTON W. TAYLOR 
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Discretionary Use of Small Business Set-Asides
under Multiple-Award Contracts

1. **Purpose:** The purpose of this Instructional Letter (IL) is to provide guidance on the implementation of Section 1331 of the Small Business Jobs Act of 2010 (Jobs Act) to Federal Acquisition Service (FAS) multiple-award contracts, e.g., Federal Supply Schedule contracts (Schedules), governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs), and also to provide guidance on how to use small business set-asides on multiple award contracts as authorized by a recent Interim Rule ([FAR Case 2011-024](#)).
2. **Background:** Generally, the policy of the Federal Government is to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Recently, there have been new policy changes and initiatives to improve the Government's performance on this important public policy objective. The Jobs Act was passed to develop ways to assist small businesses competing for Federal contracts. This statute contained a provision, titled Section 1331, that addresses set-asides under MACs at the contract level as well as at the task/delivery order level.

The [Interim Rule](#) was published in the Federal Register (with an effective date of November 2, 2011) amending the Federal Acquisition Regulation (FAR) to implement Section 1331 of the Jobs Act. This regulatory action provides agencies with the immediate ability to set aside orders issued under multiple award contracts at their discretion.
3. **Effective Date:** November 2, 2011
4. **Termination Date:** This IL remains in effect until it is cancelled or incorporated into a handbook.
5. **Applicability.** This IL applies to all GSA/FAS acquisition activities awarding and administering multiple award contracts, Schedule Blanket Purchase Agreements (BPAs), and task/delivery

orders against multiple award contracts. This IL also applies to Department of Veterans Affairs (VA) acquisition activities awarding and administering Schedule contracts.

6. Reference Regulations. FAR Parts 8, 16, 19, and 52 are revised; clauses 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items, 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award, 52.219-6 Notice of Total Small Business Set-Aside, 52.219-14 Limitations on Subcontracting, 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside, 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns, and 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program are updated; and one new clause, 52.219-13 Notice of Set-Aside of Orders, is prescribed.

7. Instructions/Procedures.

I. Federal Supply Schedules

- A. Solicitation Refresh: A refresh must be completed for all Schedule solicitations by November 16, 2011, to insert the eight FAR clauses below:

- i. 52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders - Commercial Items (NOV 2011)
- ii. 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award (NOV 2011)
- iii. 52.219-6 Notice of Total Small Business Set-Aside (NOV 2011)
- iv. 52.219-13 Notice of Set-Aside of Orders (NOV 2011)
- v. 52.219-14 Limitations on Subcontracting (NOV 2011)
- vi. 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011)
- vii. 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (NOV 2011)
- viii. 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011)

The Solicitation Writing System (SWS) will mark these clauses as "required" for all Schedule solicitations.

B. In-House Offers:

- i. Paper offers – For paper Schedule offers received prior to the solicitation refresh, the contracting officer shall issue a solicitation amendment (i.e., Standard Form 30) to incorporate the eight clauses listed in paragraph A above. When deciding to accept the amendment, each offeror will have the opportunity to withdraw its offer.
- ii. eOffers – For eOffers submitted prior to the solicitation refresh, the contracting officer shall direct the offeror to go back into the eOffer

system and "accept" the latest refresh. Each offeror will also have the opportunity to withdraw its offer.

C. Contract Modifications:

- i. All Schedule contracts shall be modified to incorporate the eight clauses listed in paragraph A above. This shall be accomplished through a typical mass modification issued from SWS following a solicitation refresh. There is no need for a separate modification. The effective date for existing Schedule contracts will be the date that the modification is executed.

II. Other FAS multiple award contracts (i.e., GWACs and multi-agency contracts)

A. Insert the seven FAR clauses below in solicitations for multiple award contracts that are expected to have small business participation (note that 52.212-5 is excluded here, as it applies only to contracts for commercial items):

- i. 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award (NOV 2011)
- ii. 52.219-6 Notice of Total Small Business Set-Aside (NOV 2011)
- iii. 52.219-13 Notice of Set-Aside of Orders (NOV 2011)
- iv. 52.219-14 Limitations on Subcontracting (NOV 2011)
- v. 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011)
- vi. 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (NOV 2011)
- vii. 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011)

B. For all existing multiple award contracts, the contracting officer shall modify contracts by November 16, 2011, to incorporate the seven FAR clauses listed in paragraph A above. For multiple award contracts that do not have any small business participation (e.g., Alliant), no modification is required.

III. Placement of Orders Against FAS multiple award contracts and Establishment of Schedule BPAs To Be Set Aside for Small Business (or a subset of small business)

A. Until all multiple award contracts have been modified to incorporate set-aside clauses (as specified in Sections 7.I.C and 7.II.B above):

- i. The contracting officer shall incorporate the following FAR clauses, as applicable, in all Requests for Quotes (RFQs):
 - a. 52.219-6 Notice of Total Small Business Set-Aside (NOV

2011) for orders set aside for small business concerns or 8(a) firms

- b. 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award (NOV 2011) for orders set aside for HUBZone small business concerns
 - c. 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) for orders set aside for service-disabled veteran-owned small business concerns
 - d. 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (NOV 2011) for orders set aside for EDWOSB concerns
 - e. 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011) for orders set aside for women-owned small business concerns
- ii. The contracting officer shall incorporate clause 52.219-14 Limitations on Subcontracting (NOV 2011) into RFQs for small business and 8(a) order set-asides. For orders set aside for HUBZone, service-disabled veteran-owned small business, EDWOSB, and women-owned small business concerns, the clauses listed in paragraph "i" above already include limitation on subcontracting language and therefore no additional clause needs to be incorporated.
 - iii. The contracting officer shall follow the ordering procedures specified in FAR Subpart 8.4 for Schedule orders, and the ordering procedures specified in FAR Subpart 16.505 for GWACs and other MAC orders.
 - iv. The contracting officer should include the following language in the RFQ: "This is a notice that this order is a total set-aside for [insert either "small business concerns" or specify a subset of small business concern]. Only quotes submitted by [insert either "small business concerns" or specify a subset of small business concern] will be accepted by the Government. Any quote that is submitted by a contractor that is not [insert either "a small business concern" or specify a subset of small business concern] will not be considered for award."

B. After all multiple award contracts have been modified to incorporate set-aside clauses (as specified in Sections 7.I.C and 7.II.B above):

- i. The contracting officer should include the following language in the RFQ: "This is a notice that this order is a total set-aside for [insert either "small business concerns" or specify a subset of small business concern]. Only quotes submitted by [insert either "small business concerns" or specify a subset of small business concern] will be

accepted by the Government. Any quote that is submitted by a contractor that is not [insert either "a small business concern" or specify a subset of small business concern] will not be considered for award."

- ii. The contracting officer shall follow the ordering procedures specified in FAR Subpart 8.4 for Schedule orders, and the ordering procedures specified in FAR Subpart 16.505 for GWACs and other MAC orders.

C. Contracting officers shall consider specific small business program eligibility requirements prior to setting aside an order.

IV. Revisions to Customer-Facing Acquisition Policy Guidance

A. FAS acquisition activities facilitating direct acquisitions through the administration of the applicable FAS contract vehicles (e.g., Schedules, GWACs and other MACs) are responsible for updating acquisition guidance (ordering guides, websites, etc.) to reflect changes regarding small business set-asides. The following are examples of materials that may require updating:

- i. Ordering guides for GSA GWACs and MACs (e.g., Alliant Small) should be updated by the office(s) responsible for maintaining and administering these contracts. Ordering guides should be updated to ensure they are consistent with current regulations for small business set-asides as prescribed in FAR Subpart 16.5.
- ii. The MAS Program Office will update the acquisition policy guidance on www.gsa.gov/schedules to reflect the new requirements as prescribed in FAR Subpart 8.4.

8. Questions & Answers.

Use of Set-Asides Under the Federal Supply Schedule Program

Q1. Does the interim rule authorize set-asides for orders and BPAs under Schedule contracts?

A1. Yes. The interim rule amends FAR Subpart 8.4 to make clear that set-asides may be used in connection with the placement of orders and the establishment of BPAs under Schedule contracts.

Q2. Under the interim rule, may an agency set aside Schedule orders and/or BPAs for any of the socioeconomic programs (e.g., small disadvantaged, service-disabled veteran-owned, women-owned, and HUBZone small business concerns)?

A2. Yes. FAR 8.405-5(a)(1) expressly states that agencies may set aside orders and BPAs for any of the small business concerns identified in 19.000(a)(3).

Q3. Are there any circumstances in which the interim rule requires the consideration or use of set-asides?

A3. No. It is entirely up to the ordering contracting officer to decide whether or not it is in the best interest of the Government to set aside an order for small business. See FAR 8.405-5.

Q4. Must agencies prepare any special determinations in order to conduct set-asides under Schedule contracts?

A4. Generally, no. As explained in paragraph d. of A5 below, no special documentation is required if the agency is conducting a competitive set-aside. However, if the agency is limiting the number of small business sources considered to fewer than that anticipated in FAR 8.404 and 8.405 (which lay out the basic competition requirements when using the Schedules) the agency must prepare documentation to justify the limitation. Given that there are more than 15,000 small businesses participating in the Schedules Program, there should be few instances where an agency is unable to give consideration to a sufficient number of small businesses to comply with the competition requirements set forth in FAR 8.404 and 8.405.

Q5. What steps must an agency take under the interim rule to set aside an order under the Schedules Program?

A5. Agencies must take the following four steps:

- a. *Perform market research.* Determine if there are small businesses capable of performing the desired work. Given that there are more than 15,000 small business Schedule contract holders, and Schedule contracts focus exclusively on commercial products and services, agencies should easily be able to identify small businesses that are capable and competitive.
- b. *Incorporate clauses into RFQs (until all Schedule contracts are modified).* FAS is in the process of modifying its existing vehicles to include all appropriate set-aside clauses. Contracting officers can visit Contracts Online (accessed through gsaelibrary.gsa.gov) to view a listing of current clauses and see which Schedule contracts have been modified. Until Schedule contracts have been modified to incorporate set-aside clauses, contracting officers shall incorporate the following FAR clauses, as applicable, in all RFQs:
 - 52.219-13 Notice of Set-Aside of Orders (NOV 2011)
 - 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award (NOV 2011)
 - 52.219-6 Notice of Total Small Business Set-Aside (NOV 2011)
 - 52.219-14 Limitations on Subcontracting (NOV 2011)
 - 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011)
 - 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (NOV 2011)
 - 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011)

- c. Include a statement in the RFQ for an order or BPA that will be set aside. The contracting officer should include the following language in the RFQ: "This is a notice that this order is a total set-aside for [insert either "small business concerns" or specify a subset of small business concern]. Only quotes submitted by [insert either "small business concerns" or specify a subset of small business concern] will be accepted by the Government. Any quote that is submitted by a contractor that is not [insert either "a small business concern" or specify a subset of small business concern] will not be considered for award."
- d. Use the same competition rules as provided in FAR 8.405, except limit consideration only to small businesses.

Size of BPA/Order	Competition Strategy	Any special documentation required?
BPA/order exceeds the Micro-Purchase Threshold but not the Simplified Acquisition Threshold (SAT)	Agency posts a quote on eBuy	No
	Agency considers reasonably available information about at least three small businesses	No
BPA/order exceeds the SAT	Agency posts a quote on eBuy	No
	Agency sends quote out to enough small businesses to receive quotes from at least three small businesses	No

Q6. If an agency uses eBuy, must it ever prepare a justification, such as if the agency receives fewer than three bids?

A6. No. Posting an RFQ on eBuy so that all those awarded the relevant Special Item Numbers (SINs) can view the requirement satisfies all Schedule competition requirements, both above and below the SAT. See FAR 8.402(d)(1).

Q7. If an agency decides to limit consideration to fewer than all small businesses (i.e., it does not use eBuy) and thinks it will receive at least three offers but receives only two or one, what must it do?

A7. When fewer than three quotes are received from Schedule contractors that can fulfill the requirement, the ordering contracting officer shall prepare a written determination explaining that no additional contractors capable of fulfilling the requirement could be identified despite reasonable efforts to do so. The determination must clearly explain efforts made to obtain quotes from at least three small business Schedule contractors. See FAR 8.405-1(d)(3)(ii), 8.405-2(c)(3)(iii)(B), 8.405-3(b)(1)(ii)(B), and 8.405-3(b)(2)(v)(B). [This requirement applies only to orders exceeding the SAT.]

Q8. If an agency can only find two small businesses, can it still do a set-aside?

A8. Yes, both for orders above and below the SAT. However, the agency must document the circumstances for restricting consideration to fewer than three Schedule contractors based on one of the reasons at FAR 8.405-6, which sets out requirements when limiting sources. For actions above the SAT, the requirement to distribute the RFQ to a sufficient number of Schedule-holders to ensure at least three quotes are received is mandated by Section 863 of the FY 2009 National Defense Authorization Act, and Section 1331 of the Jobs Act does not provide relief from this competition requirement. Since there are more than 15,000 small business contractors available via the Federal Supply Schedule Program, though, this situation should be rare.

Q9. Can you set aside orders against small business set-aside SINs and/or against the Temporary Administrative and Professional Staffing Services (TAPS) Schedule (which is totally set aside for small business concerns)?

A9. Yes, you can do a set-aside for a specific small business socioeconomic category against a set-aside SIN and/or the TAPS Schedule. For example, you can choose to set aside an order against TAPS for HUBZone small business concerns. As always, however, market research must indicate that there are sufficient eligible small business concerns capable of performing the work before you can set aside the order for that small business socioeconomic category.

Q10. Can socioeconomic status still be used as an evaluation factor as opposed to set-asides?

A10. Yes. If an order is not being set aside exclusively for small business concerns, contracting officers can use socioeconomic status as an evaluation factor in RFQs.

Use of Set-Aside Orders Under Affected GSA GWACs and Multi-Agency Contracts (MACs)**Q11. Does the interim rule authorize set-asides for orders under affected GSA GWACs and MACs?**

A11. Yes. The interim rule amends FAR 16.505 to make clear that order set-asides may be used in connection with the placement of orders under affected GSA GWACs and MACs, such as Alliant Small Business.

Q12. Can you set aside orders against one of the small business set-aside GWACs, like Alliant Small Business?

A12. Yes. You can do a set-aside for a specific small business socioeconomic category against the Alliant Small Business GWAC. For example, you can choose to set aside an order against Alliant Small Business for HUBZone small business concerns.

Q13. Under the interim rule, may an ordering contracting officer set aside orders for any socioeconomic program when using affected GSA GWACs and MACs (e.g., small disadvantaged, service-disabled, women-owned, and HUBZone small business concerns)?

A13. Yes. FAR 16.505(b)(2)(i)(f) expressly states that agencies may set aside orders for any of

the small business concerns identified in 19.000(a)(3).

Q14. Are there any circumstances in which the interim rule requires the consideration or use of set-asides?

A14. No. It is entirely up to the contracting officer to decide whether or not it is in the best interest of the Government to set aside an order for small business. See FAR 16.505(b)(2)(i)(f).

Q15. What steps must an agency take under the interim rule to set aside an order under affected GSA GWACs and MACs?

A15. Agencies must take the following four steps:

- a. Perform market research. Determine if there are small businesses capable of performing the desired work.
- b. Incorporate clauses into RFQs (until base contracts are modified). Until FAS contracts have been modified to incorporate set-aside clauses, contracting officers shall incorporate the following FAR clauses, as applicable, in all RFQs:
 - 52.219-13 Notice of Set-Aside of Orders (NOV 2011)
 - 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award (NOV 2011)
 - 52.219-6 Notice of Total Small Business Set-Aside (NOV 2011)
 - 52.219-14 Limitations on Subcontracting (NOV 2011)
 - 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011)
 - 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (NOV 2011)
 - 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011)
- c. Include a statement in the RFQ for an order that will be set aside. The contracting officer should include the following language in the RFQ: "This is a notice that this order is a total set-aside for [insert either "small business concerns" or specify a subset of small business concern]. Only quotes submitted by [insert either "small business concerns" or specify a subset of small business concern] will be accepted by the Government. Any quote that is submitted by a contractor that is not [insert either "a small business concern" or specify a subset of small business concern] will not be considered for award."
- d. Use the same competition rules as provided in FAR 16.505, except limit consideration only to small business or any socio-economic group identified in

FAR 19.0001(a)(3).

General Questions**Q16. What do you mean by "specific small business program eligibility requirements" in section 7.III.C?**

A16. Some of the small business programs identified in FAR Part 19 have special circumstances under which you can set aside an acquisition. For example, for an order to be set aside under the Women-Owned Small Business (WOSB) Program, the requirement needs to be (1) under \$6.5 million if it is for manufacturing and under \$4 million for all other requirements, and (2) fall within the scope of those specific NAICS code industries in which the SBA has determined that women-owned small business concerns are underrepresented or substantially underrepresented in Federal procurement (see FAR Subpart 19.15, WOSB Program for additional requirements).

Q17. What system changes will be made to facilitate the set-aside of orders?

A17. In order to facilitate the set-aside of orders in eBuy, the short-term solution will be to provide a box for ordering activities to check if the order is to be set aside for small business concerns. We are also encouraging contracting officers to include specific language in the RFQ when setting aside an order (see question 9 above), so that contractors understand up-front whether they are eligible for a particular requirement. This short-term solution is estimated to be available in eBuy in January 2012.

The long-term solution for eBuy is to remove an RFQ from the view of those Schedule, GWAC, and certain MAC contractors that are not eligible to respond to a particular set-aside order. For example, if an RFQ is set aside for service-disabled veteran-owned small business concerns, then only those Schedule-holders that are awarded the relevant Schedule and SIN(s) and are service-disabled veteran-owned small businesses will be able to view it; other Schedule-holders will not be able to view the set-aside RFQ. In the case of GWACs, all the service-disabled veteran-owned contractors under that GWAC will be notified of the RFQ, thereby fulfilling the fair opportunity notice requirement.

Author: Mahruba Uddowla