
No More Dollar Limits on Federal Contract Set-Asides for Women-Owned Small Businesses

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On June 21, 2013, the government issued an interim rule amending the Federal Acquisition Regulation (“FAR”) to remove the dollar limits on contracts that may be set aside for Women-Owned Small Businesses (“WOSB”) and Economically Disadvantaged Women-Owned Small Businesses (“EDWOSB”). The FAR rule conforms to a final rule issued by the U.S. Small Business Administration (“SBA”) on May 7, 2013. This change should greatly increase the number and dollar value of contracts federal agencies set aside for WOSBs and EDWOSBs in the future.

Background

Thirteen years ago, Congress enacted the Small Business Reauthorization Act of 2000, which created the WOSB Program. Specifically, section 8(m) of the Act, 15 U.S.C. § 637(m), authorized contracting officers to restrict competition for federal contracts to eligible WOSBs and EDWOSBs as part of the WOSB Program. A decade later, in October 2010, SBA issued a final rule amending the “Women-Owned Small Business Federal Contract Assistance Program,” and allowing, for the first time, contracting officers to set aside certain contracts for WOSBs and EDWOSBs. This revised WOSB Program went into effect on February 4, 2011.

At the time the revised WOSB Program was finalized in 2011, contracting officers could set aside contracts for WOSBs or EDWOSBs only if the anticipated award price of the contract did not exceed \$5 million for manufacturing contracts or \$3 million for all other contracts. In 2012, SBA amended its regulations to adjust the contract thresholds for inflation, increasing the thresholds to \$6.5 million for manufacturing contracts or \$4 million for all other contracts. Despite the increase for inflation, the dollar limitations continued to significantly limit the benefit of the set-aside program for WOSB and EDWOSB concerns.

Elimination of Contract Limit

Earlier this year, Congress enacted the National Defense Authorization Act for Fiscal Year 2013 (“NDAA”). Section 1697 of the NDAA removed the dollar limit on contracts that may be set aside for WOSBs and

EDWOSBs under SBA's WOSB Program. By eliminating the limitation on the dollar amount of contracts that may be set aside under the WOSB Program, larger value contracts now may be awarded to WOSB and EDWOSB concerns, which, in turn, should assist federal agencies in achieving the statutorily mandated 5% government-wide goal for procurement from WOSBs (including EDWOSBs).

Under the FAR and SBA rules, contracting officers may now set aside contracts of **any dollar amount** for WOSBs if the North American Industry Classification System ("NAICS") code is in one of the identified industries in which WOSBs are "*substantially* underrepresented," and for EDWOSBs if the NAICS code is in one of the identified industries in which WOSBs are "underrepresented." SBA has identified 83 NAICS categories where WOSBs are underrepresented or substantially underrepresented. Additionally, a contracting officer must also determine that (1) the contract can be awarded at a fair and reasonable price and (2) for a WOSB procurement, there is a reasonable expectation that two or more WOSBs or EDWOSBs will submit offers or, for an EDWOSB procurement, two or more EDWOSBs will submit offers.

Although SBA's final rule implementing the NDAA has been in effect for over a month, a review of solicitations and pre-solicitations issued on FedBizOpps.gov in the last thirty days reveals that none of the acquisitions set aside for WOSBs or EDWOSBs exceeds the previous dollar limits. It is possible that contracting officers have been waiting for the express authority under the FAR to set aside larger value contracts for WOSBs and EDWOSBs.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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