GSA

GSA Office of Governmentwide Policy

FEB 21 2003

GSA Acquisition Letter MV-03-01

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: DAVID A. DRABKIN 02/21/03
DEPUTY ASSOCIATE ADMINISTRATOR
FOR ACQUISITION POLICY

SUBJECT: Federal Acquisition Regulation Class Deviation – Size of Business Re-representation

1. Purpose. This Acquisition Letter provides guidance for implementing the class deviation to the Federal Acquisition Regulation (FAR) that I approved on October 10, 2002.

2. Background. The class deviation is applicable to FAR Section 19.301, "Representation by the offeror" and Section 19.804-6(c), "Multiple Award and Federal Supply Schedule contracts." The current FAR permits contractors to keep their size status for the length of the contracts, but did not anticipate extended length contracts such as GSA's Federal Supply Schedule contracts that may go on for 20 years, if all options are exercised.

Consequently, if a small business concern became a large business early on in the contract period, they could keep their small business size status for many years. This may give the now large business concern unfair advantages over small business concerns and result in misleading statistics in reporting dollars awarded to small business concerns in the Federal Procurement Data System (FPDS).

To mitigate this problem, the class deviation requires GSA contracting officers to obtain from a contractor, a re-representation of their size status before exercising any option period for all contracts set forth in paragraph 5.

The Office of Federal Procurement Policy (OFPP) is concerned about large, long-term contracts that allow contractors to masquerade as small businesses and deprive small businesses of opportunities to compete against their peers. OFPP is considering a policy that will require executive agencies to require annual re-representation of their government-wide acquisition contracts regarding size status. Until such time as OFFP provides us with definitive implementation instructions, this acquisition letter will be followed.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

3. Effective Date. March 1, 2003.

4. Termination Date. This Acquisition Letter will expire February 29, 2004, unless cancelled earlier or extended.

5. Applicability. This Acquisition Letter applies to all Federal Supply Service Multiple Award Schedule contracts and other multiple award type contracts awarded under FAR Part 16 that contain option periods.

6. Reference to Regulations. FAR Parts 16, 17, and 19.

7. Instructions/procedures.

a. For Federal Supply Service Multiple Award Schedule contracts and all other multiple award type contracts, contracting officers must require contractors to re-represent their size status prior to exercising an option period. For existing contract periods, implementation is effective with the next exercise of any option for these contracts. The re-representation (FAR 52.212-3(c) for commercial items or 52.219-1 for other than commercial items) must be incorporated into the contract and implemented for each option period by either:

(1) Receiving a signed statement by the contractor or

(2) Receiving an updated representation (52.212-3(c) or 52.219-1) signed and dated by the contractor.

Any change to a contractor's size status must be reflected in a change to FPDS.

b. When a previously awarded small business re-represents itself as other than small business:

(1) For multiple award contracts that were not awarded as a small business set-aside, the contracting officer must determine the estimated value of the remainder of the contract option periods. If the subcontracting plan threshold is met, the contracting officer must negotiate an acceptable subcontracting plan and make it a part of the contract in accordance with FAR 19.7 and GSAM 519.7, before the option period can be exercised.

(2) If the multiple award contracts were awarded as a small business set-aside, the contracting officer would be precluded from exercising the option for the concern that was no longer an eligible small business.

c. FAR 19.804-6(c) permits an 8(a) business concern to continue to accept new orders under a multiple award or Federal Supply Schedule contract even after a concern's

program term expires, the concern otherwise exits the 8(a) Program, or the concern becomes other than small for the NAICS code assigned under the contract. However, prior to exercising an option, contracting officers must determine that the 8(a) concern is still eligible for program participation. For Federal Supply Schedule Multiple Award Schedule contracts and other multiple award type contracts that were not awarded as an 8(a) set-aside, if the concern is no longer eligible as an 8(a) contractor, the contracting officer must obtain a re-representation from the contractor, modify the contract, and reflect current business size status in FPDS. If the multiple award contracts were awarded as an 8(a) set-aside, the contracting officer would be precluded from exercising the option for the concern that is no longer eligible for 8(a) program participation.

d. For any solicitation for Federal Supply Service Multiple Award Schedule contracts and any other multiple award type contracts issued on or after March 1, 2003, the contracting officer must include a statement informing the offeror that before exercising any option to a contract, the contractor must re-represent its size status. The contracting officer must include as appropriate one of the following statements or similar language:

(1) For Multiple Awards Not Resulting From a Small Business Set-Aside

"Prior to exercising the option period of the contract, the contractor will be required to re-represent business size status by providing a size status statement to the contracting officer or by completing the applicable portion of 52.212-3, Offer or Representations and Certifications – Commercial Items or 52.219-1, Small Business Program Representations, as applicable to the contract(s). If a previously awarded small business concern re-represents itself as other than small, an acceptable subcontracting plan must be negotiated with the contracting officer if the value of the remainder of the contract option periods exceed the threshold for a subcontracting plan."

(2) For Multiple Awards Resulting From a Small Business Set-Aside

"Prior to exercising the option period of the contract, the contractor will be required to re-represent business size status by providing a size status statement to the contracting officer or by completing the applicable portion of 52.212-3, Offeror Representations and Certifications – Commercial Items or 52.219-1, Small Business Program Representations, as applicable to the contract(s). If a previously awarded small business concern re-represents itself as other than small, the contracting officer shall be precluded from exercising the option."

(3) For Multiple Awards Resulting From an 8(a) Set-Aside

"Prior to exercising the option period of the contract, the contractor will be required to re-represent business size status and 8(a) program eligibility by providing a size status statement to the contracting officer or by completing the applicable portion of 52.212-3, Offeror Representations and Certifications – Commercial Items or 52.219-1, Small Business Program Representations, as applicable to the contract(s). If a previously awarded 8(a) small business concern re-represents itself as other than small, the contracting officer shall be precluded from exercising the option."