

AMADEO LAW FIRM

PROFESSIONAL LIMITED LIABILITY COMPANY

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SBA Publishes Final Rule For Women-Owned Small Businesses

By Mark A. Amadeo, Esq.

On October 7, 2010, the U.S. Small Business Administration published its final regulation authorizing set asides for Women-Owned Small Businesses (WOSBs) and Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs).

According to Karen Mills, SBA Administrator, "Women-owned businesses are one of the fastest growing sectors of our nation's economy, and even during the economic downturn of the last few years, have been one of the key job creation engines in communities across the country." However, Mills added, "Despite their growth and the fact that women lead some of the strongest and most innovative companies, women-owned firms continue to be underrepresented in the federal contracting marketplace. This rule will be a platform for changing that by providing greater opportunities for women-owned small businesses to compete for and win federal contracts."

An eligible business must be 51 percent owned and controlled by one or more women who are "economically disadvantaged" and primarily managed by one or more women. The women must be U.S. citizens. The business must be "small" in its primary industry in accordance with the SBA's size standards for the industry. The SBA may waive the requirement of "economic disadvantage" for procurements in industries in which WOSBs are "substantially underrepresented."

The final regulation clarifies that a woman is presumed economically disadvantaged if she has a personal net worth of less than \$750,000, her adjusted gross income does not exceed \$350,000, and the fair market value of all of her assets does not exceed \$6 million. A woman whose income exceeds \$350,000 may rebut the presumption that she is not economically disadvantaged.

The final regulation identifies 45 industries in which women-owned businesses are underrepresented and 38 industries in which women-owned

businesses are substantially underrepresented. The final rule authorizes set-asides to EDWOSBs and WOSBs for federal contracts in these industries where the contract price does not exceed \$5 million for manufacturing contracts and \$3 million for other contracts. A contracting officer must have a reasonable expectation that, in industries in which WOSBs are underrepresented, two or more EDWOSBs will submit offers for the contract or, in industries where WOSBs are substantially underrepresented, two or more WOSBs will submit offers for the contract. The final regulation does not authorize a contract officer to award a sole source contract to a WOSB.

A WOSB or EDWOSB may self-certify, but will be required to submit documents proving its status to an online document repository maintained by the SBA. Alternatively, a WOSB or EDWOSB may be certified by a federal or state government agency or a third-party certification entity approved by the SBA.

The final regulation differs significantly from a 2008 proposed regulation that drew much criticism and ultimately was scrapped. The earlier 2008 proposed regulation only identified four industries in which WOSBs were underrepresented and in which contracts would be set aside for WOSBs. The 2008 proposed regulation also required a federal agency to certify that it had discriminated against WOSBs before it could set aside a contract procurement. Unlike the 2008 proposed regulation, the final regulation does not require an agency to certify that it had discriminated against WOSBs before setting aside a contract.

The final regulation, which can be found at <http://edocket.access.gpo.gov/2010/pdf/2010-25179.pdf>, will take effect on February 4, 2011.

Jobs Act Establishes Parity For HUBZone & 8(a) Companies

By Mark A. Amadeo, Esq.

On September 27, 2010, President Obama signed into law The 2010 Small Business Jobs Act, which, in addition to providing tax cuts to certain small businesses, made a technical revision to the Small Business Act in order to establish parity among small businesses bidding for government contracts.

The legislative change was in response to recent rulings by the Government Accountability Office and the U.S. Court of Federal Claims. In those decisions, the GAO and the U.S. Court of Federal Claims relied on the HUBZone provisions of the Small Business Act, which state that “notwithstanding any other provision of law” a contract opportunity “shall” be awarded to a qualified HUBZone, to support the conclusion that HUBZone businesses have statutory priority over businesses in the 8(a) program. The 2010 Small Business Jobs Act altered the HUBZone provisions, which now state that a contract opportunity “may” be awarded to a qualified HUBZone business.

BITS ON BIDS . . .

SDVOSB A/E Firm Wins Protest

On October 7, 2010, the Government Accountability Office in In re Powerhouse Design Architects & Engineers, Ltd., sustained a protest to the terms of Sources Sought Notices issued on an unrestricted basis by the U.S. Department of Veterans Affairs (VA).

The GAO ruled that U.S. Department of Veterans Affairs (VA) procurements of architectural, engineering & related services under FAR and the Brooks Act must still comply with set-aside preferences owed to Service-Disabled Veteran Owned Small Businesses (SDVOSBs) under the Veterans Benefits, Health Care, and Information Technology Act of 2006 when there is a reasonable expectation that offers will be received from two or more SDVOSBs. The GAO’s decision can be found here: <http://www.gao.gov/decisions/bidpro/403174.pdf>.

ABOUT THE LAW FIRM:

The Amadeo Law Firm, PLLC, is a litigation and consultation boutique with offices in Frederick, MD & Washington, DC. The firm represents clients in commercial, employment, employee benefit, and government contracting matters.

The laws governing federal, state, and local government contracting are often complex and evolving. Government contractors may need to seek consultation to ensure compliance with latest rules and applicable regulations.

The Government Contracting Practice of the Amadeo Law Firm, PLLC, monitors government procurement laws and regulations and provides sophisticated advice to government contractors so that they can successfully compete in the government marketplace.

The Small Business Jobs Act also includes other important provisions:

- The SBA is directed to establish a mentor-protégé program to assist small businesses owned by women and service-disabled veterans and in HUBZone that is modeled after the 8(a) mentor-protégé program;
- Prime contractors are required to “make a good faith effort” to fulfill small business subcontracting plans that are submitted with a proposal and must provide the contracting officer with a written explanation when the prime contractor fails to fulfill the small business subcontracting plan;
- Prime contractors must inform a contracting officer when they reduce amounts paid to subcontractors or have not paid subcontractors within 90 days after receipt of payment from the federal government. Contracting officers are authorized to consider an unjustified failure to make full or timely payment in evaluating a prime contractor’s performance.
- The contract bundling threshold is reduced to \$2 million, and agencies that intend to bundle contracts in excess of \$2 million must consider market research and alternative contracting approaches and must issue a written determination that the contract bundling is “necessary and justified.”

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