OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

JUL 26 2012

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT))
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Maximizing Small Business Utilization on Multiple Award Contracts

On November 2, 2011, an interim rule amending the FAR to implement section 1331 of the Small Business Jobs Act of 2010 (Public Law 111-240) was published in the *Federal Register* (76 FR 68032). It provides for the use of order set-asides in connection with multiple award contracts. The interim rule gives initial guidance for taking advantage of the section 1331 authorities, and:

- makes clear that set-asides at the discretion of the contracting officer may be used in connection with the placement of orders under multiple award contracts, notwithstanding the otherwise applicable requirement to provide each contract holder a fair opportunity to be considered;

- makes clear that set-asides at the discretion of the contracting officer may be utilized under any of the various small business programs (e.g. Small Business, HUBZone Small Business, Woman-Owned Small Business, and Service-Disabled Veteran-Owned Small Business);

- further makes clear that order set-asides at the discretion of the contracting officer may be used in connection with the placement of orders and blanket purchase agreements under Multiple Award Schedule (MAS) contracts; and

- revises existing solicitation provisions and contract clauses to provide notice of set-asides.

Working together to achieve the enactment of section 1331, both the Administration and Congress recognized that untapped opportunities exist to increase small business participation on multiple award contracts. They further recognized that set-asides historically have proven to be a very powerful small business contracting tool. For these reasons, we are asking the acquisition community of the Department of Defense (DoD) to give increased attention to set-asides when placing orders under multiple award contracts.

On May 16, 2012, Small Business Administration (SBA) published in the *Federal Register* (77 FR 29130), a proposed rule for comment providing more specific guidance

addressing each of the three components of section 1331: (1) partial contract set-asides; (2) contract reserves; and (3) order set-asides. The purpose of the SBA's rulemaking is to ensure both that meaningful consideration of set-asides and reserves is given in connection with the award and placement of task and delivery orders under multiple award contracts and that those tools are used in a consistent manner.

To assist DoD in meeting its small business goals, and to ensure that the benefits of order set-asides are being maximized, contracting activities should take the following steps:

(1) For all prospective new multiple-award contracts with small business contract holders where order set-asides may be appropriate, commit to using order set asides unless a determination is made prior to placing the order that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality and delivery (i.e., the "rule of two" is not met at the order level).

(2) Identify existing multiple-award contracts with small business contract holders where order set-asides may be appropriate and commit to using order set-asides.

(3) Commit to order set-asides under MAS contracts for orders falling within the scope identified in item (1). GSA has posted a set of "frequently asked questions" (FAQs), available at http://www.gsa.gov/portal/content/113371, to explain how set-asides may be applied when placing orders under MAS contracts. You are encouraged to review the FAQs and also to take advantage of free training that GSA offers on order set-asides.

(4) Review success stories in connection with the use of the interim FAR rule, available at https://max.omb.gov/community/x/EwFoIQ, and document examples of successes as you identify them.

(5) Ensure that contract files appropriately documents how section 1331 tools were considered.

(6) Sample contract files to review market research and other documents explaining how order set-asides were considered and, if not used, why the agency purchased the product or service on an unrestricted basis.

DoD contracting activities should report on actions taken or actions planned in response to this memorandum and their use of set-asides under the MAS by August 23, 2012, to my staff point of contact, Ms. Cassandra R. Freeman, 703-693-7062 or cassandra.freeman@osd.mil

Thank you for your attention to this important matter and for your ongoing commitment to help DoD meet and exceed its small business contracting goals.

Richard Ginman
Director, Defense Procurement
and Acquisition Policy