




GSA Office of the Chief Acquisition Officer

GSA Acquisition Alert 2008-07

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MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

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SUBJECT: Small Business Set-Asides under Task and Delivery Orders

On October 8, 2008, the U.S. Government Accountability Office (GAO) issued a decision (B-400403) under a DoD acquisition that determined that the set-aside provisions of Federal Acquisition Regulation (FAR) 19.502-2(b) apply to competitions for task and delivery orders issued under multiple award, indefinite delivery/indefinite quantity (IDIQ) contracts. GAO's decision applies the "Rule of Two" to task and delivery orders issued under contracts awarded under the authority of the Federal Acquisition Streamlining Act (FASA).

FASA set forth the requirement that all contractors be provided a "fair opportunity" to compete for task and delivery orders under multiple award IDIQ contracts and authorized four exemptions to this process as set forth in FAR Part 16. GAO's decision essentially establishes a fifth exemption because a set-aside will not provide all contractors a "fair opportunity" to compete for orders.

GAO's decision was directed to orders issued under multiple award IDIQ contracts awarded under FAR Part 16 and was not applicable to orders issued under Federal Supply Schedule contracts. Some personnel, however, may believe GAO's decision can be construed as applying to orders issued under Schedule contracts. This is incorrect; both FAR Subpart 8.4 and Part 38 make clear that the Small Business provisions of FAR Part 19 do not apply to orders issued under Schedule contracts, except as noted therein.

While GSA acknowledges that GAO decisions are recommendations to the Executive Branch, GSA does not agree with GAO's decision in this matter. Further guidance will follow.

Questions concerning this Acquisition Alert should be directed to Mr. Al Matera at (202) 501-0843.