OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Small Disadvantaged Business Procurement; Reform of Affirmative Action in Federal Procurement

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: Notice of determination concerning price evaluation adjustments.

SUMMARY: The Federal Acquisition Regulation (FAR), 48 CFR Part 19, contains regulations permitting eligible small disadvantaged businesses (SDB's) to receive price evaluation adjustments in Federal procurement programs. The FAR provides further that the Department of Commerce (DOC) will determine the price evaluation adjustments available for use in Federal procurement programs. The DOC, in the attached memorandum, determines price evaluation adjustments (percentages) by Standard Industrial Classification (SIC) major groups and regions that are effective for new solicitations for the upcoming year. The DOC memorandum describes the methodology for determining price evaluation adjustments.

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, Telephone 202–395–3302. For information on the Commerce methodology, contact Mr. Jeffrey Mayer, Director of Policy Development, Economics and Statistics Administration, U.S. Department of Commerce, Telephone 202–482–1728.

SUPPLEMENTARY INFORMATION:

Procurement Mechanisms and Factors

FAR Subpart 19.11 provides for the use of price evaluation adjustments for eligible SDBs. OFPP gives notice that the attached Memorandum from the DOC determines that certain SIC major groups are eligible for a price evaluation adjustment. The Memorandum also includes factors for use on a regional basis in certain industries. FAR Subpart 19.11 provides that these factors are authorized for use in new solicitations issued on or after October 1, 1998, that allow for a price evaluation adjustment.

Allan E. Brown,

Acting Administrator.

Attachment

Department of Commerce

Economics and Statistics Administration

Memorandum for Office of Federal Procurement Policy

From: Jeffrey L. Mayer, Director of Policy Development.

Subect: Price Evaluation Adjustments and Benchmarking Methodology.

Pursuant to new Federal Acquisition Regulation (FAR) 19.201(b), transmitted herein is the Department of Commerce determination on the price evaluation adjustments for use in Federal procurements and the supporting benchmarking methodology.

I. Background

FAR 19.201(b) requires the Department of Commerce to determine price evaluation adjustments for applicable standard industrial classification (SIC) major groups. To establish price evaluation adjustments, the Office of the Chief Economist and the Office of Policy Development in the Economics and Statistics Administration of the Department of Commerce (DOC) conducted an economic analysis to identify industries eligible for price evaluation adjustments to implement the Administration's proposal for reforming affirmative action in Federal procurement programs.

DOC is responsible for: (i) developing the methodology for calculating the benchmark limitations; (ii) developing the methodology for calculating the size of the price evaluation adjustments that should be employed in a given industry; and (iii) determining applicable adjustments. In addition, DOC is charged with providing information to the Small Business Administration for its use in administering the 8(a) program.

II. Price Evaluation Adjustments

Based upon the methodology described below, DOC determines that a price evaluation adjustment of ten percent be employed in the following industries:

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT

SIC major industry group	Eligibility (*)	Description of industry grouping
Agriculture, Forestry, and Fishing		
01		Agricultural production—crops.
02		Agricultural production—livestock.
07		Agricultural services.
08		Forestry.
09		Fishing, hunting, & trapping.
Mining		
10	*	Metal mining.
12	*	Coal mining.
13	*	Oil & gas extraction.
14	*	Extraction of nonmetallic minerals, ex. Fuels.
Construction		
15		Building construction—general contractors.
15	*	East North Central.
15	*	East South Central.
15	*	Middle Atlantic.
15		Mountain.
15		New England.
15		Pacific.
15		South Atlantic.
15		West North Central.
15	*	West South Central.

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT—Continued

SIC major industry group	Eligibility (*)	Description of industry grouping
16		Heavy construction other than buildings—contractors.
16		East North Central.
16	*	East South Central.
16		Middle Atlantic.
16		Mountain.
16		New England.
16		Pacific.
16		South Atlantic.
16		West North Central.
16	*	West South Central.
17		Construction—special trade contractors.
17		East North Central.
17		East South Central.
17		Middle Atlantic.
17		Mountain.
17	*	New England.
17		Pacific.
17		South Atlantic.
17	*	West North Central.
17		West South Central.
Manufacturing		
20		Food & kindred products.
21		Tobacco products.
22	*	Textile mill products.
23	*	Apparel & other finished products made from fabrics.
24	*	Lumber & wood products, ex. Furniture.
25	*	Furniture & fixtures.
26	*	Paper & allied products.
27	*	Printing, publishing, & allied industries.
28	*	Chemicals & allied products.
29	*	Petroleum refining & related industries.
30	*	Rubber & miscellaneous plastics products.
31	*	Leather & leather products.
32		Stone, clay, glass, & concrete products.
33		Primary metal industries.
34	*	Fabricated metal products.
35		Industrial & commercial machinery & computer equipment.
36	*	Electronic & other electrical equipment & components, ex. Computers.
37	*	Transportation equipment.
38	*	Measuring, analyzing, & controlling instruments; photographic, medical & optical goods; watches & clocks.
39	*	Miscellaneous manufacturing industries.
Transportation, Communications, Electric, Gas, Sanitary Services		
40		Railroad transportation.
41	*	Local & suburban transit & interurban highway passenger transportation.
42	*	Motor freight transportation & warehousing.
44	*	Water transportation.
45		Transportation by air.
46	*	Pipelines, exc. natural gas.
47	*	Transportation services.
48	*	Communications.
49	*	Electric, gas, & sanitary services.
Wholesale Trade		
50	*	Wholesale trade—durable goods.
51	*	Wholesale trade—nondurable goods.
Retail Trade		
52	*	Building materials, hardware, garden supply, & mobile home dealers.
53	*	General Merchandise stores.
54	*	Food stores.
55	*	Automotive dealers & gasoline service stations.
56	*	Apparel & accessory stores.
57	*	Home furniture, furnishings, & equipment stores.
58	*	Eating & drinking places.
59	*	Miscellaneous retail.

INDUSTRIES ELIGIBLE FOR TEN PERCENT PRICE EVALUATION ADJUSTMENT—Continued

SIC major industry group	Eligibility (*)	Description of industry grouping
Finance, Insurance, and Real Estate		
60	*	Depository institutions.
61	*	Nondepository adjustment institutions.
62	*	Security & commodity brokers, dealers, exchanges, & services.
63	*	Insurance carriers.
64	*	Insurance agents, brokers, & services.
65	*	Real estate.
67	*	Holding & other investment offices.
Services		
70	*	Hotels, rooming houses, camps, & other lodging places.
72		Personal services.
73	*	Business services.
75	*	Automotive repair, services, & parking.
76	*	Miscellaneous repair services.
78		Motion pictures.
79		Amusement & recreation services.
80	*	Health services.
81		Legal services.
82	*	Educational services.
83		Social services.
84		Museums, art galleries, & botanical & zoological gardens
86		Membership organizations.
87	*	Engineering, accounting, research, management, & related services.
88		Private households.
89	*	Miscellaneous services.

III. Benchmarking Methodology

DOC's methodology is designed to ensure that the price adjustments authorized by the reforms are narrowly tailored to remedy discrimination. The methodology includes four steps. First, DOC identified firms that are ''ready and willing'' to supply the federal government. Second, DOC calculated the federal government's utilization of each ready and willing firm as the FY 1996 net contract obligations awarded by federal agencies to each ready and willing firm. Third, DOC estimated the capacity of each ready and willing firm to supply the federal government. Finally, DOC compared SDB shares of utilization and capacity held by ready and willing firms in each Contracting Arena [1] and recommended that the price evaluation adjustments be implemented where SDB share of industry utilization falls short of SDB share of industry capacity.

A. Data

DOC set four major criteria for choosing the data needed to estimate the benchmark limitations:

- The data should be as current as possible;
- The data should include information on a large number of firms, including SDBs;
- The data should identify firms that are ready and willing to supply the federal government;
- The data should permit the direct comparison of capacity and utilization for the same year.

No existing data sets, such as the Survey of Minority-Owned Business Enterprises (conducted by the U.S. Bureau of the Census), were designed to meet these criteria. Consequently, DOC identified three sets of firms as ready and willing to supply the federal government in FY 1996.[2] These sets are:

1. Bidders from a sample of competitive procurements (over $25,000) in FY 1996. DOC implemented a survey of federal contracting officers, who were asked to identify the firms that bid in a random sample of 16,616 procurements (the survey had a response rate of 76 percent). The sample of procurements was drawn from a sampling frame consisting of all new, competitive, multi-bid contracts awarded by major federal agencies.[3] The sampling frame was extracted from the Federal Procurement Data System (FPDS) for prime contract actions worth more than $25,000.[4] The sampling frame

[1] A firm's Contracting Arena is the industry grouping in which it bid, was awarded a contract, or had 8(a) certification and (in the case of construction companies) the Census Division where it was located. In most cases, the industry grouping is the two digit Standard Industrial Classification major industry group. The following related major industry groups were regrouped together for purposes of applying the benchmarking methodology because otherwise the regression analysis (described below) for at least one of the constituent major industry groups would have had what DOC deemed to be an insufficient number of firms (that is, less than 30 degrees of freedom): agriculture (SIC Major Industry Groups 01, 02, 07); forestry and fishing (08, 09); mining (10, 12, 13, 14); rubber, misc. plastic products, and leather products (30, 31); local transit, interurban highway passenger transportation, and misc. transportation services (41, 47); pipelines and utilities (46, 49); retail trade other than eating and drinking places (53, 54, 55, 56, 57,59); and finance, insurance, and real estate (60, 61, 62, 63, 64, 65, 67). We could make no satisfactory aggregation for several major industry groups (21, 40, 72, 78, 79, 81, 84, 86, 88) that would allow analysis with a sufficient number of firms.

[2] Unique ''firms'' were identified by their Taxpayer Identification Numbers (TIN) and the Contracting Arenas in which they participated in federal contracting. Firms with missing or defective TINs or Contracting Arena information were not included in the unified data set. A firm can be any for-profit company, non-profit organization, or a state or local government establishment that bid for a federal contract, or a company certified in the 8(a) program. Finally, some firms were included more than once if they participated in federal contracting in more than one Contracting Arena.

[3] The agencies were all 14 cabinet agencies, plus EPA, GSA, NASA, and TVA, which together accounted for 98.8 percent of the value of all procurement contracts over $25,000 in FY 1996.

[4] Awards under contracts valued at $25,000 or less (and individual contract actions worth $25,000 or less and awarded by DOD) accounted for only 7.2 percent of all federal contract awards in FY 1996. The FPDS does not include detailed data on individual contracts worth $25,000 or less, making it impossible to include these contracts in DOC's analysis. Since the SDB share of the sub-$25,000 awards was only 3.3 percent, while the SDB share of awards over $25,000 was 5.8 percent, omitting the sub-$25,000 awards (where usage of 8(a) contracting is negligible) does not under-estimate SDB utilization.

was stratified by the two, three, or four-digit Standard Industrial Classification (SIC) codes corresponding to the major activity covered by each contract. For SIC 15, SIC 16 and SIC 17 (i.e., construction industries), the sampling frame was further stratified by the nine multi-state Census Divisions in which the contractor was located. Each sampled contract had a sample weight equal to the reciprocal of its probability of being sampled. All firms responding to the solicitation resulting in the contract in the sample were included in the resulting bidders' data set.

2. All firms that won all other types of new contracts (over $25,000) in FY 1996, i.e., firms identified in the FY 1996 FPDS that were the sole bidder on new, competitive contracts, and firms awarded new contracts in FY 1996 through noncompetitive contracting.[5]

3. All firms certified as active and eligible for 8(a) contracts by the Small Business Administration in FY 1996, whether or not the firms won new contracts in FY 1996.

To prevent duplication, DOC matched the three data sets by the firms' Taxpayer Identification Numbers and the Contracting Arenas in which they participated in federal contracting. Each firm that appeared in data sets (2) or (3) was given a sample weight of 1.0, as these firms were sampled with certainty. DOC recomputed the sample weights for each firm that appeared more than once in data set (1), but not in data sets (2) and (3), as the inverse of the joint probability of being selected, where the probability of each solicitation that resulted in a contract being selected was independent.[6] The resulting ''Ready and Willing Data Set'' had no firms with duplicate Taxpayer Identification Numbers in the same Contracting Arena.[7]

DOC then matched the firms in the Ready and Willing Data Set by their Taxpayer Identification Numbers to data on firm age,[8] annual payroll, and for-profit status for all payroll taxpaying legal entities included in the Census Bureau's 1995 Standard Statistical Establishment List (SSEL), which consists of all establishments in the United States. The SSEL was also used to fill in the state where construction firms were located, if the Ready and Willing Data Set was missing that information.[9]

B. Computing SDB Share of Utilization

DOC matched firms in the Ready and Willing Data Set to the FPDS, by their Taxpayer Identification Numbers and Contracting Arenas to obtain the total net contract obligations actually awarded (''utilization'') to these firms in FY 1996. The resulting data set is called the ''Utilization Data Set.'' DOC then computed the SDB share of utilization in a Contracting Arena by dividing the weighted sum of utilization of SDB firms in the Contracting Arena by the weighted sum of utilization of all firms the Contracting Arena (regardless of SDB status), where the weights were the sample weights in the Ready and Willing Data Set.

C. Estimating SDB Share of Capacity

DOC defined a firm's capacity to fulfill federal contracts as the geometric mean value of federal contracting work a contractor of a given size and age handles, in a given Contracting Arena. The method for estimating capacity is as follows:

1. Using the Utilization Data Set, the natural logarithm of utilization was regressed on the following variables for for-profit firms in each Contracting Arena with positive utilization:

- A constant term;
- Firm age in 1996 (measured as the natural logarithm of number of years since the firm first appeared in the SSEL);
- A dummy variable if the firm first appeared in the SSEL before 1975;
- The natural logarithm of 1995 payroll (measured in thousands of dollars);
- Interaction terms between the natural logarithm of payroll and the two age variables;
- A dummy variable if the firm certified that it met the Small Business Administration's definition of a small business in that Contracting Arena.

2. Using the Utilization Data Set, the mean natural logarithm of utilization was computed separately for two groups of firms in each Contracting Arena:

- Firms missing one or more of the regressors listed in step 1 above;
- Non-profit and government establishments.

This was done so that we would not have to drop these firms from our analysis and possibly bias our estimates. Not-for-profit and government entities do not fit well into our basic regression model, since payroll data are probably not a true measure of resource limits for a government establishment and because non-profit organizations may behave differently from for-profit firms participating in federal contracting.

3. The mean natural logarithm of utilization for firms of a given size and age was estimated for each of the for-profit firms with complete data in the Ready and Willing Data Set by computing their predicted utilization using the regression coefficients estimated in step 1 above and the corresponding characteristics of ready and willing firms (i.e., their payroll, age, and small business status).

4. The mean natural logarithm of utilization for profit-making firms with missing data and for non-profit/government entities in the Ready and Willing Data Set was set equal to the corresponding means computed in step 2 above.

5. The estimates of mean natural logarithm of utilization were exponentiated to convert them to dollar amounts; these were each firm's ''capacity'' to fulfill federal contracts.

6. Weighted sums of the capacity estimates were then computed for SDBs and for all firms in each Contracting Arena, where the weights were the sample weights described in section III.A. above.

7. The benchmark limitations (i.e., SDB share of industry capacity held by firms ready and willing to fulfill federal contracts) in each Contracting Arena is equal to the ratio of the weighted sum of SDB capacities to the weighted sum of capacities of all firms in the Contracting Arena.

[5] Firms listed under GSA and VA schedules in FY 1996 and that did not appear elsewhere in the FY 1996 data were not included in DOC's analysis; total orders under these schedules accounted for only 1.6 percent of contract awards greater than $25,000 in FY 1996. DOC found that omitting these firms had no effect on its findings.

[6] Competitive contracts were sampled without replacement for purposes of collecting data on bidders, so the probability of selecting one contract is independent of the probability of selecting another. However, since many firms bid for more than one contract, bidders were sampled with replacement.

[7] Some firms in the Ready and Willing Data Set did not consistently identify their SDB status. DOC based its decision on which SDB designation to accept as follows:

- All 8(a) certified firms were assumed to be SDBs;
- If a firm was not 8(a) certified, then it was considered SDB if it self-certified as SDB on any offer in the bidders' sample;
- If a firm was in neither the 8(a) certified data set nor in the bidders' data set, then its SDB status was assumed to be the most frequently appearing status that appeared for the firm in the FPDS.

[8] More precisely, each firm's age was derived from a variable in the SSEL that indicated the year that the TIN first appeared in the SSEL, the earliest effective year being 1975, when Census first began keeping track of when firms appeared in the data set.

[9] Any estimates that used SSEL data were subject to the Census Bureau's Title 13 disclosure rules and must be accompanied by this standard notice:

''The research described in this memorandum was conducted while the authors were research associates at the Center for Economic Studies, U.S. Bureau of the Census. Research results and conclusions expressed are those of the authors and do not necessarily indicate concurrence by the Bureau of the Census or the Center for Economic Studies.''

In this way, DOC's method for estimating capacity converts the number of ready and willing firms that contract with the federal government to aggregate expected value of the amount (in dollars) of federal contracting that ready and willing firms potentially could fulfill. The method adjusts raw firm counts to reflect observable characteristics widely believed to be associated with the quantity of federal contracting work that a firm is able to manage.

IV. Estimating the Size of the Price Evaluation Adjustment

Based on the Defense Department's experience with its price evaluation adjustment, DOC determined that a price evaluation adjustment of ten percent would not raise the SDB share of utilization above the SDB share of capacity held by firms ready and willing to fulfill federal contracts in any industry (and regions, in the case of the construction sector). Accordingly, DOC determined that there were no industries (and regions, in the case of the construction sector) where a price evaluation adjustment greater than 0 percent and less than ten percent would be appropriate.

V. Basis for DOC's Determinations

DOC compared the benchmark limitations for each Contracting Arena to the SDB shares of actual utilization in each Contracting Arena. DOC determined that a price adjustment be used in those Contracting Arenas where it can be shown that SDBs have a greater share of capacity than the federal government is using, i.e., where the benchmark limitations exceed SDB shares of actual utilization.[10]

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[10] In effect, the benchmarking methodology measures gaps in contracting awards to SDBs that are unrelated to size and age differences with non-SDBs. The methodology does not attempt to estimate SDB share of industry capacity to fulfill federal contracts in the absence of all current and past discrimination. In other words, to the extent that differences in size, age, or number of firms reflect discrimination against small, disadvantaged businesses, this analysis does not take direct account of such discrimination, which may be substantial.