



Forest
Service

Washington
Office

1400 Independence Avenue, SW
Washington, DC 20250

File Code: 6300-4

Date: July 15, 2009

Route To:

Subject: Recent GAO Decisions Concerning Small Business Programs

To: Regional Foresters, Station Directors, Area Director, IITF Director

The enclosed memorandum of July 10, 2009 from the Office of Management and Budget (OMB) provides guidance on considering the various small business programs when performing market research. Based on this memo, contracting units may give active consideration to each small business program equally, taking into consideration our requirement for meeting the minimum program goals of each preference area. This supersedes the language in my May 14, 6300 letter that reiterated the requirement to consider HUBZone small business concerns before other small business programs. As stated in the OMB memo, “the applicable SBA “parity” regulations remain binding and in effect as validly-promulgated implementations of the government statutes.”

For your information, on July 6, the General Accounting Office (GAO) issued a decision on SBA’s request to reconsider their decision on Mission Critical B-401057, May 4, 2009, 2009 CPD para. 93, in which GAO concluded that, prior to the award of a contract to an Alaska Native Corporation on a sole-source basis, the statute authorizing a preference for Historically Underutilized Business Zone (HUBZone) small businesses requires a contracting agency to first consider whether two or more qualified HUBZone small businesses could be expected to submit offers and whether award could be made at a fair price. The SBA argues that GAO’s decision erred in concluding that the HUBZone statute creates a mandatory preference for HUBZone small businesses over the preference for 8(a) businesses. GAO denied the request for reconsideration. You can read the full decision at <http://www.gao.gov/decisions/bidpro/4010572.htm>.

Whether protests will continue to be lodged remains to be seen, however, we hope the issue will be completely resolved in the near future as stated in the memo. Should you receive a protest based on a decision not to set aside a procurement for HUBZone businesses, please contact Byron Brown immediately at (703) 605-4544 so that we may assist in how to proceed.

/s/ Ronald E. Hooper
RONALD E. HOOPER
Director, Acquisition Management



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