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WHAT YOU NEED TO KNOW: SET-ASIDES FOR LOCAL COMPANIES IN POST-KATRINA FEDERAL PROCUREMENT



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Federal agencies (e.g., Corps of Engineers) still continue to recognize local contractor, procurement set-asides in this post-Katrina era. These set-asides give advantages to local firms competing for federal procurements. Local set-asides have been approved by the GAO in Ashbritt, Inc., B-29788, B-29789.2, 2006 U.S. Comp. Gen. Lexis 48 (March 20, 2006).

In this regard, the Federal Acquisition Regulations at Parts 26.203(a) and 52.226-3 recognize local set-asides requiring offerors (bidders) to represent that they are or are not a firm residing or primarily doing business in a designated area. Factors agencies are to consider in deciding whether a firm resides or primarily does business in a designated area within Louisiana, include:

- Location of the firm’s permanent office;
- Date of any office in a designated area was established;
- Existing state licenses, record of past work in the designated area;
- Contractual history the firm has with subcontractors and/or suppliers in the designated area;
- Percentage of the firm’s gross revenues attributable to the work performed in the designated area;
- Number of permanent employees the firm employs in the designated area;
- Membership in local and state organizations in the designated area; and
- Other evidence that establishes the firm resides or primarily does business in the designated area.

The federal agency issuing the contract has some discretion based on the Stafford Act in defining the designated area and in considering which firms qualify as “local”.

Often, the set-aside is for small businesses only. If local small firms wish to bid through a merger (e.g., joint venture or business relationship) with an out of state firm, considerations will include whether the new company, if a merger, is still small under SBA rules for the primary industry classification of the business. If an 8(a) firm – one qualified with SBA as a small disadvantaged business - is involved in the merger, there is the question of whether SBA will approve the change in business structure. If companies are contemplating entering into a joint venture to obtain local set-asides, they should clarify with the contracting officer before the bid opening or offer due date whether the joint venture between a local and non-local firm qualifies under a local set-aside. Again, if an 8(a) firm is involved, SBA must approve the joint venture in order for it to be eligible to receive local set-asides. Time should be allowed for SBA approvals.

These rulings continue to be important for Louisiana firms who compete for federal contracts in Louisiana and Mississippi, respectively.

Jones Walker’s attorneys, and specifically the Firm’s Disaster Recovery and Government Contract Practice Groups are ready to assist clients navigate the maze of post-Katrina era federal procurement processes.

Contact Stan Millan at smillan@joneswalker.com for more information.