

Awarding Task Orders to Small Businesses

Background

Quality of service delivery and *socioeconomic public policy* (e.g. small business goals/socioeconomic credit) are key reasons why government customers use the 8(a) STARS GWAC. *Quality of service delivery* is assured by the evaluation process required of industry partners to win a position on the GWAC, and also by the flexible customer-controlled task order evaluation and award process during which customers control evaluations techniques designed to select a contractor to fulfill their mission objectives.

In support of *socioeconomic public policy*, all prime contractors on the GWAC were duly recorded as 8(a) small business concerns in FPDS-NG at GWAC award, making them *small businesses on the GWAC* – a term of art that is beneficial for customers to know. However, as time passes, circumstances sometimes change for an individual contractor whereby it is no longer considered a small business concern in general, and more limited circumstances can make an individual contractor no longer considered a small business concern on a federal contract, such as the 8(a) STARS GWAC.

This matters, because in order to ensure a task order award goes to an 8(a) *small business on the GWAC*, the selected industry partner must not have had a change in circumstances to its small business status resulting in it becoming *other than a small business on the GWAC*.

What are the basic small business size rerepresentation (SR) regulations that govern these matters?

FAR Clause	52.2 19-28	www.acquisition.gov
FAR Final Rule	74 FR 11821 & 74 FR 14492	www.gpoaccess.gov
SBA Final Rule	71 FR 66434	www.gpoaccess.gov

There are additional SBA regulations applicable to specialty socioeconomic programs, such as the 8(a) program (13 CFR 124). The 8(a) program has two prongs applicable here: a) small business (SB) status and b) 8(a) eligibility considerations. The focus here is how to award task orders to industry partners that remain *small businesses on the GWAC*, as then both SB and 8(a) credit will follow. The focus is on the size status of the industry partner, as 13 CFR 124 requires 8(a) companies to report to SBA annually, and to notify SBA if the company ever has a change in circumstances which could affect the company's 8(a) eligibility. SBA renders determinations regarding the company's continuing 8(a) eligibility in this manner, including status under existing 8(a) contracts, such as 8(a) STARS. Upon receipt of an SBA termination of a company's 8(a) eligibility, that contractor is no longer eligible to receive new business/task orders under 8(a) STARS, and is removed from the list of industry partners.

How do I know if an 8(a) STARS GWAC industry partner remains a *small business on the GWAC*?

The Small Business GWAC Center maintains a list, presently in spreadsheet format, on the 8(a) STARS GWAC's website, www.gsa.gov/8astars under the industry partner tab, page left. Industry partner small business status is indicated on the list, as demonstrated in individual functional area tabs.

What circumstances lead to an 8(a) STARS industry partner becoming *other than a small business on the GWAC per the SR regulations*?

There are two conditions that trigger that eventuality, on the schedule established in the SR regulations cited above:

- 1) Organic growth
- 2) Merger or acquisition

As a government customer, what may I do with this information to assure task order award to an industry partner that remains a small business on the GWAC?

Because there might be a slight lag between a company becoming other than small, and it fulfilling its obligation to report to GSA pursuant to [FAR 52.219-28](#), which provides for such reporting to be slightly in arrears, the Center recommends that ordering contracting officers (OCOs) not simply rely upon the information about industry partner size status maintained at www.gsa.gov/8astars, and instead implement an Order Size Rerepresentation (OSR). Pursuant to SBA's final rule, GAO and the Federal Courts have upheld a procuring agency's authority to request size certifications with respect to particular orders. See *LB&B Associates, Inc. v. U.S.*, 68 Fed. Cl. 765 (Fed. Cl. 2005); *CMS Information Services, Inc.*, B-290541, Aug 7, 2002, 2002 CPD ¶ 132. Accordingly, an OCO has the discretion to require a rerepresentation of the 8(a) STARS GWAC prime contractors' size status as a condition of order award.

A template for implementing OSR (OSR Template) is provided later in this section.

I noted on the 8(a) STARS GWAC's list of industry partners that certain firms were not identified as small businesses on the GWAC. Is it permissible to allow them into competitions for task orders?

Yes, pursuant to the SR regulations cited above. However, a task order award to such an industry partner is not expected to result in socioeconomic credit. OSR should not be utilized if all GWAC prime contractors will be considered for task order award.

As an 8(a) STARS GWAC prime contractor, what can I do to make sure my size status is accurately represented to the Federal Government?

- Comply with the notification requirements of FAR [52.2 19-28](#)
- Keep ORCA up-to-date

As an 8(a) STARS GWAC prime contractor, what can I do if a task order solicitation isn't clear about the intention vis-à-vis OSR?

- Immediately seek clarification from the ordering contracting officer about their intent for OSR
- OSR is clearly indicated if a task order opportunity applies the OSR template guidance

OSR Template

An OCO may incorporate the following OSR language into task order solicitations in order to require an OSR as a condition of task order award.

Notice of Order Size Rerepresentation (OSR) at the Task Order Level

Offers are solicited only from 8(a) STARS GWAC prime contractors that have not rerepresented as other than small in accordance with FAR 52.219-28 Post-Award Small Business Program Rerepresentation. Those 8(a) STARS GWAC prime contractors having experienced an event that triggers the notification requirements contained in FAR 52.219-28(b)(1) or (b)(2), and are other than small as a result of said triggering event, are considered to be other than a small business concern for the purposes of this procurement regardless of whether the contractor has fulfilled the rerepresentation notification pursuant to FAR 52.219-28.

Offers received from 8(a) STARS GWAC contractors that have rerepresented their size status as other than small under the 8(a) STARS GWAC, or have had a triggering event and are not currently considered small business concerns under the 8(a) STARS GWAC, are not desired and shall be rejected as non-conforming with this OSR. The following representation must be completed and submitted with the offer.

I hereby represent that my company (check one) ____ has ____ has not rerepresented itself as other than a small business concern under the 8(a) STARS GWAC, and (check one) ____ has ____ has not experienced a triggering event pursuant to FAR 52.219-28 resulting in the company being other than a small business concern regardless of if notification of that circumstance has or has not been provided pursuant to the timetable established in FAR 52.219-28.