

"letters of commitment" to subcontract with such firms.

(b) The extent to which the plan provides a significant share of subcontracting dollars to small, small disadvantaged, and women-owned small business concerns.

(c) The quality of the offeror's overall plan, including its goals and methods for achieving those goals.

(d) For individual contract plans, the offeror's procedures for reviewing, approving, and monitoring its subcontractors' compliance with subcontracting plans.

(e) The extent to which the offeror utilizes small business incumbents with proven performance records as subcontractors under consolidated contracts for services. Utilizing incumbents allows the government to retain institutional knowledge, and small businesses to continue providing quality services at advantageous prices.

(f) For mission-specific contracts such as high technology and research, the extent to which the offeror plans to award subcontracts for other than routine support services.

(g) The extent to which prime contractors have excelled in achieving subcontracting goals or participated in a Mentor Protégé Program.

b. Use of Past Performance in Source Selection.

(1) The contracting officer may obtain information from the cognizant contract administration office concerning an offeror's past performance with respect to subcontracting with small, small disadvantaged, and women-owned small business concerns. In addition, the contracting officer may seek the advice of the agency's small business representative and/or check with the SBA Area Director for Government Contracting or the Defense Contract Management Command to determine the offeror's current subcontracting performance rating.

(2) In evaluating past performance, the contracting officer may consider the following:

(a) The extent to which goals were achieved on contracts completed during the current fiscal year and the two previous fiscal years, with greater weight assigned to those contracts completed most recently.

(b) The extent to which the offeror's subcontracting efforts were consistent with its subcontracting plan or the extent to which the offeror made a good faith effort to comply with its plan.

(c) The extent to which the offeror required its large business subcontractors to adopt similar plans under the contract flow-down requirement.

(d) The extent to which an offeror complied with the timely and accurate submission of the required SF 294 and SF 295.

(e) The extent to which the offeror participates in a Mentor Protégé Program.

c. Awards and Incentives.

(1) Contracting activities, in conjunction with Heads of Offices of Small and Disadvantaged Business Utilization, may establish an awards program for contracting officials and prime contractors who do an outstanding job of promoting small, small

disadvantaged, and women-owned small business concerns as subcontractors. Recognition may be in the form of plaques, certificates, monetary awards, etc. The awards program may, among other things, recognize:

(a) Prime contractors that exceed all of their subcontracting goals;

(b) Contracting officials who are exemplary in administering and enforcing compliance with subcontracting plans, and

(c) Small business and contracting specialists who demonstrate outstanding outreach efforts to promote the use of small, small disadvantaged, and women-owned small business concerns as subcontractors.

(2) In addition to an awards program, contracting activities may consider incentives such as:

(a) In contracts containing the Liquidated Damages clause at FAR section 52.219-16, requiring that a certain percentage of the contract value be subcontracted to small business concerns. If the percentage is not met, the contracting activity may assess liquidated damages.

(b) Making the administration and enforcement of subcontracting plans a critical factor in the contracting officer's performance appraisal.

(c) Negotiating alternative payment schedules with prime contractors that offer to provide substantial subcontracting opportunities to small, small disadvantaged, and women-owned small business concerns. This incentive also could be applied to prime contractors that agree to mentor small business concerns under a Mentor Protégé Program.

(d) Reducing inspection, monitoring, and auditing of subcontracting compliance for prime contractors that have an outstanding past performance record. For example, a contractor that receives an outstanding rating on a subcontracting compliance review could receive a follow-up review the next year that consists of a statistical desk audit only. The SBA has authorized its field office staff to exempt outstanding contractors from a formal compliance review for three years as long as the SF 295 shows no deterioration in the dollars awarded to small, small disadvantaged, and women-owned small business concerns during that period.

d. Goals.

(1) The contracting officer may use target goals in solicitations to inform potential offerors of what the Government expects in an acceptable subcontracting plan.

(2) The contracting officer may specify subcontracting percentage goals to increase small, small disadvantaged, and women-owned business concern participation in newly consolidated contracts for non-commercial items/services. The percentages may be determined on a contract-by-contract basis based on market research and requests for information from potential offerors and potential small business subcontractors.

(3) In addition to the statutory goals for small, small disadvantaged, and women-owned small business concerns, which are based on the projected value of the prime and subcontract awards proposed by the offeror, the contracting officer may also establish subcontracting goals based on the overall value of the procurement.

(Note: In some cases, this may not be a realistic approach. The dollar value of the contract may have no effect on the potential for subcontracting.)

(4) The contracting officer may consider increasing the small, small disadvantaged, and women-owned small business concern participation goals commensurate with the size of the contract. For example, the larger the degree of contract aggregation, the higher the goals for small, small disadvantaged and women-owned small business concern participation may be set.

8. **Responsibilities.** The Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in final form in the **Federal Register**. Promulgation of final regulations within that 210-day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. 405(b).

9. **Information Contact.** Questions regarding this Policy Letter should be directed to Linda Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone 202-395-3302, facsimile 202-395-5105.

10. **Judicial Review.** This Policy Letter only provides policy guidance to agencies in the exercise of their discretion concerning Federal contracting. It does not interpret the Constitution or any law. It is not intended to create any legal right or any basis on which to sue the United States or its representatives.

11. **Effective Date.** The Policy Letter is effective 30 days after the date of issuance.

[FR Doc. 99-8122 Filed 4-1-99; 8:45 am]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

OFPP Policy Letter 99-1 on Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: Notice of proposed policy letter.

SUMMARY: OFPP is requesting comments on proposed OFPP Policy Letter 99-1. This letter contains guidance on implementing government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. The Policy Letter also provides guidance on reporting requirements that will help the Small Business Administration (SBA)

determine whether executive agencies are reaching these goals. This Policy Letter, when issued in final, will supersede OFPP Policy Letter 91-1.

COMMENT DATE: We must receive comments on or before June 1, 1999.

ADDRESSES: Send your comments to Deidre A. Lee, Administrator, Office of Federal Procurement Policy, Old Executive Office Building, Room 352, Washington, DC 20503. Send e-mail comments to Keith Coleman at kcoleman@oa.eop.gov.

FOR FURTHER INFORMATION CONTACT: Keith Coleman at 202-395-7209 or Linda Williams at 202-395-3302.

SUPPLEMENTARY INFORMATION: We issued an earlier Policy Letter, 91-1, entitled "Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts" on March 11, 1991. That policy letter addressed sections 502 and 503 of the Business Opportunity Development Act of 1988. Section 502 establishes government-wide goals for contract awards to small business concerns and small disadvantaged businesses. Section 503 requires the President to include the agencies' actual goal achievements in the "State of Small Business" report. The report also includes an analysis of an agency's failure to achieve the goals, and the number and dollar value of prime contracts awarded to small firms through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards.

We need to issue this new policy letter because of statutory changes made in 1994 and 1997. Section 7106 of the Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. Section 603 of the Small Business Reauthorization Act of 1997 increases the annual government-wide goal for prime contract awards to small business concerns from not less than 20 percent to not less than 23 percent. The Act also adds a 3 percent HUBZone small business goal phased-in over the next 5 years.

This Policy Letter, when issued in final, will supersede OFPP Policy Letter 91-1. This proposed Policy Letter supports the Small Business Administration's (SBA) policies of establishing its own guidance on the new goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than

requiring agencies to provide this information in separate reports.

We request comments on the proposed policy letter.

Deidre A. Lee,
Administrator.

Policy Letter 99-1

To the Heads of Executive Departments and Establishments

Subject: Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts.

1. *Purpose.* This Policy Letter provides guidance to Executive branch departments and agencies on government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses and women-owned small businesses ("small businesses"). It also provides guidance on reporting requirements that will help the Small Business Administration (SBA) determine whether agencies are reaching these goals.

2. *Supersession Information.* This Policy Letter replaces OFPP Policy Letter 91-1, "Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts," dated March 11, 1991.

3. *Authority.* This policy letter is based on the Small Business Act, the Office of Federal Procurement Policy Act, the Business Opportunity Development Reform Act of 1988, the Federal Acquisition Streamlining Act of 1994, and the Small Business Reauthorization Act of 1997.

4. *Background.* The Small Business Act requires executive agencies, in consultation with SBA, to develop annual goals for contract awards to small businesses. SBA monitors agency performance and reports their achievements to the President. The Office of Federal Procurement Policy Act, 41 U.S.C. 405, empowers the Administrator for Federal Procurement Policy to prescribe government-wide procurement policies.

The Business Opportunity Development Reform Act establishes government-wide goals for small businesses and small disadvantaged businesses and requires the President to include the agencies' actual goal achievements in the "State of Small Business" report. The report must also include an analysis of any failure to achieve the goals, and the number and dollar value of prime contracts awarded to small businesses through noncompetitive negotiated

procurements, restricted and unrestricted competitions, and information on subcontract awards. The Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. The Small Business Reauthorization Act of 1997 (SBRA) adds a 3 percent HUBZone small business goal phased-in over the next 5 years. It also increases the annual government-wide goal for prime contract awards to small business concerns to not less than 23 percent.

In March 1991, the OFPP issued Policy Letter 91-1 to implement government-wide goals for small businesses and small disadvantaged businesses. This proposed Policy Letter includes the guidance from Policy Letter 91-1, and also implements the more recent statutory provisions of FASA and SBRA.

This proposed Policy Letter also supports the Small Business Administration's (SBA) policies of establishing its own guidance on the new goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than requiring agencies to provide this information in separate reports.

5. *Policy.* Prior to the beginning of each fiscal year, the SBA will mutually establish with each agency goals for participation by small business, small disadvantaged business, HUBZone small business, and women-owned small businesses. The agencies' cumulative goals shall count toward accomplishment of the government-wide goals.

6. *Goals.*

a. The government-wide small business goal is not less than 23 percent of the total value of all prime contracts awarded for the fiscal year. This includes all the goals for the specific categories of small business.

b. The following table lists the specific goals for small disadvantaged and women-owned small businesses.

The goal for...	is...
small disadvantaged business prime contracts.	not less than 5 percent of the value of all prime contract awards.
small disadvantaged business sub-contracts.	not less than 5 percent of the value of all subcontract awards.
women-owned small business prime contracts.	not less than 5 percent of the value of all prime contract awards.

The goal for...	is...
women-owned small business sub-contracts.	not less than 5 percent of the value of all subcontract awards.

c. The following table lists the specific goals for HUBZone small businesses.

For FY...	the percentage goal is at least...
1999	1 percent of the value of all prime contract awards
2000	1.5 percent of the value of all prime contract awards
2001	2 percent of the value of all prime contract awards
2002	2.5 percent of the value of all prime contract awards
2003 and after	3 percent of the value of all prime contract awards.

d. There is no specific statutory requirement to establish goals for awards made pursuant to section 8(a) of the Small Business Act. However, agencies must mutually establish with SBA acceptable goals for awards to 8(a) firms.

e. Agencies may count prime contract awards to small businesses toward more than one goal. Prime contract awards to small businesses, women-owned small businesses, small disadvantaged businesses, 8(a) firms, and HUBZone small businesses count toward the government-wide small business goal.

7. Responsibilities.

a. Agency Responsibilities.

(1) Each department or agency must negotiate annually in good faith with the SBA to establish its specific goals for small business, woman-owned small business, small disadvantaged business, HUBZone small business, and 8(a) firms. These goals should provide the maximum practicable opportunity for all these types of small businesses to participate in contracts let by the agency. SBA's annual guidance on establishing small business goals, entitled "Guidelines on Goals Under Procurement Preference Programs," covers the goal-setting process.

(2) At the end of the fiscal year, agencies must submit a narrative report to SBA analyzing its achievements and any failures to achieve its small business goals for the year. The report must also include plans for improving performance in the next year.

(3) Agencies must ensure that their prime and subcontract data in the

Federal Procurement Data System is accurate and complete in order to measure their small business goal accomplishments.

b. SBA Responsibilities.

(1) Prior to the beginning of each fiscal year, the SBA will work with each agency to establish mutually acceptable goals for the different categories of small business.

(2) SBA must ensure that the mutually established cumulative goals for all agencies meet or exceed the government-wide small business goal of 23 percent.

(3) SBA must compile and analyze agencies' achievements against their individual small business procurement goals and report the results to the President.

(4) SBA will use data in the Federal Procurement Data System to determine:

(i) agencies' success in reaching their procurement goals for prime and subcontracts;

(ii) the number and dollar value of prime contracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns through:

- Noncompetitive negotiation,
- Competition restricted to small disadvantaged business concerns,
- Competition restricted to small business concerns and HUBZone small business concerns, and

(iii) the dollar value of subcontracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

8. *Information Contact.* Direct any questions regarding this Policy Letter to Linda Williams (202-395-3302), or Keith Coleman (202-395-7209).

9. *Effective Date.* The Policy Letter is effective 30 days after issuance.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270, and 50-287]

In the Matter of Duke Energy Corporation; (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/ the licensee) is the holder of Facility Operating License Nos. DPR-38, DPR-47, and DPR-55, that authorize operation of the Oconee Nuclear

Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, appendix G requires that pressure-temperature (P-T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Pressurized water reactor licensees have installed cold overpressure mitigation systems/ low temperature overpressure protection (LTOP) systems in order to protect the reactor coolant pressure boundaries (RCPBs) from being operated outside of the boundaries established by the P-T limit curves and to provide pressure relief of the RCPBs during low temperature overpressurization events. The licensee is required by the Oconee Units 1, 2, and 3 Technical Specifications (TSs) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P-T limit curves in the Oconee Units 1, 2, and 3 TSs.

In the submittal of October 15, 1998, the licensee requested that the staff exempt Oconee Units 1, 2, and 3 from the application of specific requirements of 10 CFR part 50, § 50.60 and appendix G. Specifically, the licensee proposed to use the American Society of Mechanical Engineers (ASME) Code Case N-514 to permit setting the pressure setpoint of the facility's LTOP such that the P-T limits required by 10 CFR part 50, appendix G could be exceeded by 10 percent during a low temperature overpressure transient.

The licensee noted that the underlying purpose of the subject regulations is to establish limits to protect the RPVs from brittle failure during low temperature operation and the LTOP provides a physical means of protecting these limits.

The Reactor Coolant System P-T operating window at low temperatures is defined by the LTOP setpoint. Implementation of an LTOP setpoint without the additional margin of 10