



THE
BEST
OFFER
C

U.S. Treasury Bailout

Business Opportunities for Small (And Not So Small) Businesses

. . . .

The new financial bailout law authorizes the Treasury Department to spend up to \$700 billion. A major portion of that money will be used by the Treasury Department to purchase goods and services to implement the law. The Treasury Department recently published a notice on small business participation in procurements under the Emergency Economic Stabilization Act (EESA) of 2008.¹ Although the notice demonstrates the Treasury Department's intent to consider contracting with small businesses, the fact is that even businesses that are "large" may benefit from small business preference programs. For instance, in certain industries, firms that employ as many as 1500 employees are regarded as small by the United States Small Business Administration. In other industries, a firm is small if its average annual receipts are less than \$33.5 million. In certain financial industries, companies can have up to \$175 million in assets and still be classified as small.² Thus, small businesses (and not so small businesses) in all industries may be interested in the contracting opportunities and issues discussed below.

Contracts to Provide Goods and Services to the Treasury Department

The Act gives the Treasury Department authority to take several actions to restore liquidity and stability to the nation's financial system.³ The Act also authorizes Treasury to enter into contracts with private companies to accomplish that mission.⁴ Treasury has indicated that some of these contracts may be set aside for small businesses.⁵ This means that Treasury may only allow small businesses to bid on these contracts. Competitions for these contracts will be governed by the Federal Acquisition Regulation (FAR).⁶

However, even when contracts are not set aside for small businesses, small businesses are still eligible to compete for them. If any specific contract's requirements are too large for your small business, that does not mean the opportunity is lost. You may still be able to compete for it as a subcontractor to a larger business.

What the Government will buy to implement this financial bailout is unknown, but its current contracting needs suggest the breadth of opportunities that could be available. The Treasury Department currently has contracts with private companies for items from janitorial services⁷ to landscaping services,⁸ and from furniture⁹ to castor oil.¹⁰ It is currently seeking new contracts for items from security guards¹¹ to IT support,¹² and from software¹³ to a boat.¹⁴ Small businesses should visit the Treasury Department's EESA Website (www.treasury.gov/initiatives/eesa/) and the Federal Business Opportunities Website (www.fedbizopps.gov) to learn about specific contracting opportunities to help the Treasury Department carry out the financial bailout.

Contracts to Serve as a Financial Agent of the Treasury Department

The Act gives the Treasury Department authority to enter into contracts under which private companies will provide financial services on its behalf.¹⁵ The Treasury Department plans to enter into such contracts¹⁶ and it has created its own rules to govern competitions for them.¹⁷

Boston

One Financial Center
Boston, MA 02111
+1.617.856.8200
+1.617.856.8201 [fax]

Hartford

City Place I
185 Asylum Street
Hartford, CT 06103
+1.860.509.6500
+1.860.509.6501 [fax]

New York

Seven Times Square
New York, NY 10036
+1.212.209.4800
+1.212.209.4801 [fax]

Providence

121 South Main Street
Providence, RI 02903
+1.401.276.2600
+1.401.276.2601 [fax]

Washington, DC

601 Thirteenth Street NW,
Suite 600
Washington, DC 20005
+1.202.347.2222
+1.202.347.4242 [fax]

London

8 Clifford Street
London, W1S 2LQ
United Kingdom
+44.20.7851.6000
+44.20.7851.6100 [fax]

Dublin

Alexandra House
The Sweepstakes
Ballsbridge, Dublin 4
Ireland
+353.1.664.1738
+353.1.664.1838 [fax]

www.brownrudnick.com

Information contained in this Alert is not intended to constitute legal advice by the author or the attorneys at Brown Rudnick LLP, and they expressly disclaim any such interpretation by any party. Specific legal advice depends on the facts of each situation and may vary from situation to situation.

Distribution of this Alert to interested parties does not establish an attorney-client relationship. The views expressed herein are solely the views of the authors and do not represent the views of Brown Rudnick LLP, those parties represented by the authors, or those parties represented by Brown Rudnick LLP.

The Treasury Department recently stated that it will include small businesses in the selection process.¹⁸ Further, the department's own rules require it to specifically identify smaller financial institutions that do not meet minimum qualifications to manage the department's asset portfolio and designate them as sub-managers.¹⁹ The Treasury Department recently re-emphasized that small businesses that do not meet minimum requirements stated in solicitations for these services can still participate as subcontractors.²⁰ Small businesses in the financial industry should visit the Treasury Department's EESA Website (www.treasury.gov/initiatives/eesa/) to review the basic rules governing this selection process and the solicitations Treasury has issued for these services.

Issues

These contracting opportunities present several legal issues for small businesses. Among these challenges are the following questions:

- Is the competition for a contract that you're seeking governed by the FAR, or the rules the Treasury Department has created?
- If the Treasury Department does not select your small business for a contract, how can you challenge that decision?
- Does your business qualify as a small business under the rules governing the contract competition?
- If your small business wins a contract, what work can the Treasury Department require your business to perform under the contract?
- If you determine that your small business cannot perform all the work stated in a contract solicitation, what are your options for teaming with another company or becoming a subcontractor to perform the work?

For further information regarding these issues, please contact your Brown Rudnick attorney or the following attorney:

Kenneth B. Weckstein

+1.202.536.1750
kweckstein@brownrudnick.com

William S. Schmidt contributed to this alert.

Brown Rudnick LLP is an international law firm with offices in the US and Europe. With over 220 attorneys and government relations professionals, we provide assistance across key areas of the law, including government contracts, litigation, government law and strategies, health care, finance, corporate and securities, bankruptcy and restructuring, climate and energy, intellectual property, and real estate.

¹ <http://www.treas.gov/press/financial-markets.html>
² 13 C.F.R. § 121.201, available at <http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr;sid=622ec910979ea7a35c8c7561dbbd5d10;rgn=div6;view=text;node=13%3A1.0.1.15.1;idn=13;cc=ecfr>.
³ Law, §§ 2(1), 101(a)(1).
⁴ Law, § 101(c)(2).
⁵ EESA Procurements Small Business Participation, I.
⁶ EESA Procurements Small Business Participation, I.
⁷ http://www.treasury.gov/offices/management/dco/osdbu/marketing-publications/existing_contracts_hq.pdf.
⁸ Id.
⁹ http://www.treasury.gov/offices/management/dco/osdbu/marketing-publications/exist_contract_bpd.pdf.
¹⁰ http://www.treasury.gov/offices/management/dco/osdbu/marketing-publications/existing_contracts_bep.pdf.
¹¹ http://www.treasury.gov/offices/management/dco/osdbu/marketing-publications/new_contract_opps_irs.pdf.
¹² http://www.treasury.gov/offices/management/dco/osdbu/marketing-publications/new_contract_opps_fms.pdf.
¹³ http://www.treasury.gov/offices/management/dco/osdbu/marketing-publications/new_contract_opps_bpd.pdf.
¹⁴ http://www.treasury.gov/offices/management/dco/osdbu/marketing-publications/new_contract_opps_hq.pdf.
¹⁵ Law, § 101(c)(3).
¹⁶ EESA Procurements Small Business Participation, I.
¹⁷ EESA Procurements Small Business Participation, I; Process For Selecting Asset Managers, I, available at <http://www.treas.gov/press/releases/reports/assetmanagers.pdf>.
¹⁸ EESA Procurements Small Business Participation, I.
¹⁹ Process For Selecting Asset Managers, 2-3.
²⁰ EESA Procurements Small Business Participation, I.