

**Lucrative sole-source contracts to 8(a) firms now require justification**

Federal agencies that want to issue lucrative sole-source contracts to 8(a) small businesses now must justify the award to the public and to senior management.

In an interim rule change published on Wednesday in the *Federal Register*, the Federal Acquisition Regulation Councils determined that contracts in excess of \$20 million issued to companies in the 8(a) small business development program now must include written justification and approval by a senior agency leader. The approval would then be made public.

The contracting officer's justification must include a description of the agency's needs, a determination that the contract is in the government's best interest, and verification that its costs will be fair and reasonable.

The regulatory change, which was required in the 2010 Defense Authorization bill, could have serious implications for Alaska native corporations, which, along with Indian tribes and Native Hawaiian organizations, are eligible to receive 8(a) contracts of any value. All other 8(a) participants are capped at receiving sole-source contracts of \$3.5 million for services and \$5.5 million for manufacturing.

Ostensibly, the rule is designed to prevent ANCs from passing most of the work on big-budget contracts through to large subcontractors. While the new provision technically refers to all 8(a) contractors, Obama administration officials concede the rule affects tribes, ANCs and NHOs most directly.

Echoing concerns raised by tribal groups in meetings with the FAR Councils last year, the rule change noted the regulation should not be viewed as a ceiling or a cap on the size of sole-source awards. But according to the council, other 8(a) firms are likely to benefit from the change.

"The rule may indirectly benefit the 9,165 currently certified section 8(a) firms by improving their likelihood of a contract award through increased competition," the notice stated.

Separately, the councils also issued new regulatory guidance on the proper use and management of cost-reimbursement, time-and-material, and labor-hour contracts.

Among the most significant changes, contracting officer representatives now must be designated to oversee all contracts and orders other than those that are firm fixed-price. The contracting officer also must determine the continuing adequacy of the vendor's accounting system during the entire period of contract performance. And, each contract file should include documentation indicating why the particular contract type was selected.

The FAR Councils on Wednesday published several other interim rules changes.

One officially establishes parity among each of the small business socioeconomic subcategories. The priority among each of the categories was thrown into turmoil in 2009 when the Government Accountability Office, and, later, the U.S. Court of Federal Claims, determined that a decades-old statute mandated that Historically Underutilized Business Zone contractors were at the top of the procurement pecking order.

The 2010 Small Business Jobs Act re-established parity among small businesses operating in a HUBZone, or owned by an 8(a), service-disabled veteran or women-owned small business contractors;

A second mandates enhanced competition for orders placed under multiple-award contracts, including the General Services Administration's Federal Supply Schedules.

For orders above the simplified acquisition threshold of \$150,000, agencies must inform all other qualified vendors of their intentions to issue an award and provide them a fair opportunity to submit offers. When such notice is not provided, the agency must obtain offers by at least three vendors and submit in writing that no other qualified contractors were identified.