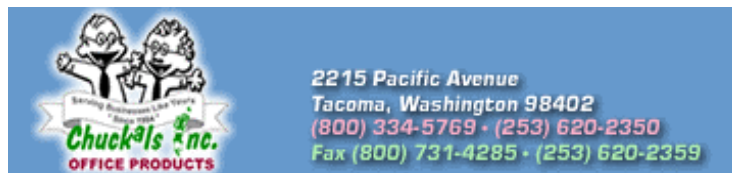


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Small Business Spotlight:

Chuckals Office Products A Leader in the Small Business Community

In the 1990s, Chuck Hellar and Al Lynden had a vision – to become Tacoma’s leading independent office supply dealer. By 1994, the duo had purchased several small independent retailers and combined them into the Chuckals enterprise. The company started as a retail establishment, but over the years, has evolved into a direct business-to-business service.

Despite competing against retail giants like Staples and Office Depot, the local company continues to experience growth and continues to thrive in the South Sound. From marketing pens and pencils to electronics and custodial supplies, Chuckals has found its niche in the region.

“I am very proud of the fact that our company has grown when many in our industry have closed or are barely hanging on,” Lynden said. “Competing against the category killers like Office Depot, Office Max and Staples is not easy. However, with the correct mix of technology, productivity and

leveraging our partnerships, we have been able to provide for our customers super store pricing with the care and commitment of a locally-owned company.”

He attributes company growth to insightful management. “There is no question that our growth can be attributed to good planning, good use of technology and hiring and developing excellent people,” Lynden said. “A good plan involves a clear vision, structured measurable goals and a detailed plan to achieve the goals. Today’s availability of excellent technology at an affordable price offers our small business the equalizer needed to fight against the corporate giants.”

Constantly making adjustments based on current technology and customer needs is how Chuckals has maintained its growth patterns in the industry. But the business goes far beyond the intangible elements. Lynden credits committed staff members as the most obvious element contributing to the company’s success.

“Having the right people is critical to profitable growth,” he said. “Our good communication and training system enhances that element.” Chasing after federal government contracts early on helped propel the company’s growth. After securing a blanket purchase agreement with the U.S. Army, Chuckals was able to establish government accounts in 48 states.

Government business continues to represent about 50 percent of Chuckals’ volume. Lynden said continued courtship of the federal government, as well as broad-based marketing here locally will certainly ensure continued prosperity. “We expect a structured growth in the high single-, low double-digits over the next five years,” he said. Perhaps the best advice, Lynden said, is to establish a system for the business. “Set high measurable expectations for you and your team,” he said. “Communicate to your team what those expectations are and how they will be measured. Provide them the guidance and tools necessary to accomplish the goals, and then get out of the way and let them be successful.”

House Oversight Panel Endorses 'Accountability in Contracting Act'

Moving swiftly, the House Oversight and Government Reform Committee March 8 marked up and unanimously approved legislation (H.R. 1362) to improve oversight of the federal procurement system just two days after the measure was introduced by Committee Chairman Henry Waxman (D-CA).

The "Accountability in Contracting Act" would "increase transparency and accountability in federal contracting, limit the use of certain types of abuse-prone contracts, and promote integrity in the acquisition workforce," Waxman said prior to the markup. The bill is scheduled to go to the House floor March 15.

The bill came on the heels of a series of hearings on problems with federal contracting associated with Iraq reconstruction, Hurricane Katrina, and large acquisition projects under the jurisdiction of the Department of Homeland Security. These hearings, Waxman said, "exposed a pattern of reckless spending, poor planning, and ineffective oversight by government officials that has resulted in the waste of hundreds of millions of taxpayer dollars."

Rep. Tom Davis (R-VA), ranking member of the committee, voted for the measure, while not endorsing it wholeheartedly. "No issue divides" the committee more than contracting, he said at the outset of the markup, adding that while he is not convinced the bill is necessarily the proper response to problems with the procurement system, it does have "positive elements."

The bill also has been referred to the House Armed Services Committee.

The legislation seeks to restrict the use of sole-source contracts--often referred to by Waxman as "no-bid contracts"--in emergency situations by limiting their duration to eight months "unless the head of the executive agency concerned determines that exceptional circumstances apply." The restriction would apply to contracts greater than the simplified acquisition threshold (currently \$100,000) entered into by agencies using "other than competitive procedures."

The Bush administration "has justified the award of lucrative no-bid contracts by citing urgent and compelling needs," according to a committee summary of the measure, but the contracts "have continued long after the emergency has passed." In addition, spending on such contracts "has more than doubled" under this administration, the summary said.

To reduce use of sole-source contracts in all situations, the bill also would require certain contracting agencies--generally those that award contracts totalling more than \$1 billion a year--to develop and implement plans with "measurable goals" to "minimize the use of contracts entered into using procedures other than competitive procedures."

The same planning requirement would apply to large contracting agencies' use of cost-reimbursement contracts, which Waxman described as "another often abused type of contract."

In each case, the plan would be due to Congress within a year of enactment of the legislation, and the Government Accountability Office would be required to review the plans and report to Congress within 18 months of enactment.

The bill also would require that agencies make public the "justification and approval" (J&A) documents they must prepare to explain why full and open competition is not used to award a particular contract. Agencies would be required, within 14 days after the contract award, to make the J&A available on the agency Web site and through the Federal Procurement Data System.

The bill also aims to promote transparency in contracting by addressing what Waxman described as the administration's practice of concealing "contractor overcharges from Congress, international auditors, and the public, impeding oversight and diminishing accountability." The provision would require agencies to report to Congress quarterly on contracts in which audits have found questioned costs of more than \$1 million.

Davis sought, but failed, to amend this provision by instead requiring quarterly reports to Congress on contract costs that contracting officials have determined to be unallowable, rather than merely questionable. "Auditors are paid to question all kinds of costs," he said, explaining that his amendment would cover "what have actually been determined to be overcharges, not just questionable costs."

The provision in the bill applies to costs in excess of \$1 million that have been "identified as unjustified, unsupported, questioned, or unreasonable under any contract, task or delivery order or subcontract." Agencies would be required to report to Congress not only the total of those costs, but also the percentage of their total value of the contract.

Agencies also would be required under the provision to provide Congress on a quarterly basis a list of audits or other reports "that identify significant or substantial deficiencies in the performance of any contractor or in any business system of any contractor under any contract, task or delivery order, or subcontract."

The bill also addresses what are widely viewed to be insufficiencies in the federal acquisition workforce by requiring that agencies devote at least an additional one percent of their procurement budgets to contract oversight, planning, and administration.

Davis sought to amend the bill to address the need for a more highly skilled acquisition workforce by creating a government-industry exchange program for acquisition professionals, but the amendment was ruled non-germane. In addition, Waxman questioned the wisdom of having employees of private contractors performing procurement work within the government.

Davis also sought to remove from the bill a provision that would increase from one to two years the amount of time contracting officials are barred from taking jobs with firms they have supervised as a government employee. That provision also would: extend the post-government employment ban to lobbying and consulting for government contractors; prohibit contracting officials from negotiating employment for their relatives; and establish a two-year cooling off period before procurement officials can award or oversee contracts involving a former employer, according to the committee summary.

While Davis's amendment was rejected, the committee agreed to a compromise retaining the current one-year post-employment restriction and allowing the restriction to be lifted when the employee receives a waiver from his or her agency's designated ethics officer.

During the markup, Rep. Edolphus Towns (D-NY), chairman of the Subcommittee on Government Management, Organization, and Procurement, called Waxman's bill a "first step" toward reform. Towns announced plans to hold further oversight hearings on such matters as the weight given to contractors' "past performance" of contracts and the use of multiple layers of subcontractors. He said he hopes to move additional reform legislation through the committee during this Congress.

H.R. 1362 as approved by the committee after Waxman offered an amendment in the nature of a substitute appears in the Text section.

ARWG Objects to House Bill Provision On Disclosure of Questioned Contract Costs

While agreeing that contractor overcharging on government contracts is a "serious offense that is not to be taken lightly," the Acquisition Reform Working Group (ARWG) recently expressed concern about a pending legislative provision that would require reports to Congress when auditors question certain contract costs, saying that the requirement "equates routine audit discussions with evidence of wrongdoing."

The group registered its concerns in a March 7 letter to Reps. Henry Waxman (D-CA) and Tom Davis (R-VA), the chairman and ranking member of the House Oversight and Government Reform Committee, which marked up the "Accountability in Contracting Act" (H.R. 1362) March 8, sending it to the full House for a possible vote the week of March 12 (see related story in this issue).

ARWG, an umbrella group of 11 associations representing thousands of companies in the contracting community, took issue with Section 202 of the bill, which would require quarterly reports to Congress on contract costs in excess of \$1 million that have been "identified as unjustified, unsupported, questioned, or unreasonable under any contract, task or delivery order, or subcontract."

Overcharging on government contracts "tarnishes the reputation of the vast majority of contractors who consistently provide quality items and services at fair and reasonable prices," the group wrote. However, it suggested that Section 202 goes too far in attempting to address the problem, and strongly recommended instead that "reporting requirements focus on final audit findings related to significant unallowable costs."

Davis met with resistance when he attempt to modify the bill in this fashion during the committee markup, with bill sponsor Waxman suggesting that the proposed change would "cripple" the provision on overcharges.

ARWG also objected that the required reports to Congress raise the potential for disclosure of proprietary information. It suggested that the legislation be changed to "make clear that no proprietary information made available as a result of these reports may be publicly released by any party."

Another provision that drew criticism of the group, Section 103, aims to discourage federal government use of cost-type contracts. Section 103 would require large contracting agencies--those that generally award contracts totalling more than \$1 billion a year--to develop and implement plans with "measurable goals" to "minimize the use of cost-reimbursement contracts."

Although "most in the private sector would prefer fixed price to cost-type contracts for most services, ... in many circumstances, most specifically in emergency and contingency contracting, where the immediate uncertainties and risks are significant, fixed price contracts are often not feasible," ARWG said. It asked that the legislation be modified to "reflect this clear recognition on the part of Congress."

"The issue is even more pronounced in the systems development arena," the group said. "Fixed-price contracts are not appropriate in most development programs because contractors and the government cannot adequately estimate the risks involved."

On a positive note, ARWG voiced support for provisions in the bill aimed at "improving the numbers of and resources available to the federal acquisition workforce. We believe that many of the contracting issues now being addressed" by Congress "are symptoms of the shortages of manpower and training for adequate contract management," the group said.

Waxman's bill is a much more restrained measure than the "Clean Contracting Act" (H.R. 6069) he introduced in September 2006 when he was the ranking member of the committee. That bill, which died with the last Congress, contained many more provisions, including some that would have: prohibited the award of large "monopoly" contracts; limited the "tiering" of subcontractors; tightened up on use of contracting authorities for commercial items; allowed award fee payments only for "above satisfactory" performance; and prohibited awards to contractors found to have a pattern of

overcharging the government or violating tax, labor, environmental, or consumer protection laws, or that have defaulted on government debt.

Waxman's latest bill also is less wide-ranging than two measures (S. 606, S. 680) that were recently introduced in the Senate to increase competition for government contracts.

S. 606, the "Honest Leadership and Accountability in Contracting Act," is sponsored by Democratic Policy Committee Chairman Byron Dorgan and S. 680, the "Accountability in Government Contracting Act," is a bipartisan measure sponsored by Sens. Susan Collins (R-ME) and Joseph Lieberman (I-CT). Each of these bills includes some provisions similar to those in Waxman's previous bill.

OFPP Head Announces New Survey Of Contracting Officials to Assess Skills Gap

The Federal Acquisition Institute will be conducting a survey of government contracting professionals "to assess skills and improve human capital planning," Office of Federal Procurement Policy Administrator Paul Denett said in a March 7 memorandum to federal agency chief acquisition officers.

The survey--in which participation will be voluntary and responses will be anonymous--will be targeted at members of the "Contracting Series" (GS-1102) sector of the acquisition workforce and those that perform GS-1102 duties but are classified in different series, Denett said. FAI last August reported that more than half the acquisition workforce will be eligible for full retirement in fiscal year 2015 and that the GS-1102 category will be hard hit by these worker departures.

The survey results will serve as a key component of a comprehensive workforce planning effort intended to help agencies determine appropriate staffing levels, Denett said. Follow-on surveys will be conducted at regular intervals, he added.

OFPP will be working with the Office of Personnel Management to develop an Internet-based tool that contracting professionals may use to "self-assess proficiency in core contracting competencies," Denett said. The assessment will "gather information related to demographics, professional business and technical competencies, supporting skills, type of work performed, and certification and warrants."

Denett asked that chief acquisition officers notify members of their workforces when the survey tool becomes available--some time in April--and that they encourage maximum participation. He also requested that agencies contact FAI if they are using other assessment tools to identify skills gaps and training needs, in order to ensure that the efforts produce similar results and that the results can be analyzed governmentwide.

Concerns about large reductions in the federal acquisition workforce in the last decade and a concomitant increase in federal procurements were raised at a recent hearing of the Senate Armed Services Subcommittee on Readiness and Management.

During the hearing, Denett told the subcommittee that, in addition to asking agencies to conduct a competency assessment of their acquisition workforce to identify skills gaps, OFPP is establishing program/project manager and contracting officer's representative certification programs to support common competencies and training standards for the acquisition function.

OFPP Announces New FAR Team To Focus on Small Business Rules

Office of Federal Procurement Policy Paul Denett March 2 announced the establishment of a Federal Acquisition Regulation Small Business Team to coordinate with the Small Business Administration on concurrent rulemaking by the SBA and the Federal Acquisition Regulatory Council.

The team, which the FAR Council agreed to establish Feb. 8, will "synchronize the SBA and FAR rulemaking processes" to "yield greater consistency and more seamless direction and guidance for the acquisition community," Denett said in a memo to agency chief acquisition officers and senior procurement executives.

The team is chaired by Debbie Tronic of the Defense Department, with Rhonda Cundiff of the General Services Administration serving as deputy chair. Members include small business experts from DOD, GSA, SBA, the National Aeronautics and Space Administration, "and at least two other civilian agencies," Denett said. A small business expert from OFPP will serve as an advisor to the team.

According to Denett's memo, the team will work with SBA and OFPP to establish a cooperative rulemaking process that will encourage SBA to identify, as early as possible in the regulatory process, any of its regulations that may require simultaneous implementation in the FAR. OFPP is charged with determining whether the regulations need to be simultaneously published in the FAR and working to accomplish this goal when necessary.

The team will function in the same manner as the other FAR teams--acquisition strategy, implementation, finance, law, and technology--but will focus solely on small business rules, Denett said.

GSA Must Establish New Competitive Range In FedBizOpps Procurement, COFC Repeats

The U.S. Court of Federal Claims, which last September sustained a protest of the General Services Administration's award of a contract to upgrade the FedBizOpps Web site, has denied the government's motion for reconsideration and instructed GSA that it must redo its competitive range determination and appoint a new source selection authority (*Information Sciences Corp. v. United States*, Fed. Cl., No. 05-13432C, 2/26/07).

In its Feb. 26 decision, the court rejected the government's contention that the court erred in determining that the source selection authority (SSA) failed adequately to document the exercise of independent judgment, as required by Federal Acquisition Regulation 15.308, when the SSA changed the technical rating for awardee Symplicity Corp. from "unacceptable" to "acceptable" based on the recommendation of the minority report of the evaluation team.

"At no place in GSA's Final Decision did the SSA provide any *independent analysis or rationale* for endorsing the Minority Report's conclusions or how it considered and balanced/weighed the Majority Report," Judge Susan G. Braden stressed.

Likewise, the court found no error in its determination that protester Information Sciences Corp. (ISC) and intervenor DEVIS were prejudiced by the contracting officer's failure to consider the offerors' prices in establishing the competitive range, as required by FAR 15.306(c).

In addition, the court rejected the government's request that it reconsider directing GSA to set aside the procurement and appoint a new SSA to review the proposals and make a new best value determination. Although the government argued that there was no reason to require the appointment of a new SSA because there was no evidence of "bad faith, bias, or intent to injure" either ISC or DEVIS, the court was unpersuaded.

"The court determined that the only way to ensure that Plaintiff and Intervenor receive a fair, unbiased evaluation of their proposals is either to require the agency to resolicit bids or to order GSA to establish a competitive range and appoint a new SSA properly to evaluate existing technical and price evaluations. In the court's judgment, electing a remedy that was less intrusive does not evidence a manifest error of law or mistake of fact," Braden said.

Finally, GSA requested the court to clarify that the agency "need not revisit the competitive range determination," and that "the SSA may rely on the existing technical and price evaluations of the four proposals included in the competitive range and select the proposal that represents the best value to the Government."

In response, the court clarified that "if GSA would like to proceed with the procurement, it *must* do so 'pursuant to the Solicitation's terms and conditions and applicable FAR regulations.' Since the court has determined that the SSA did not document the exercise of 'independent judgment,' the CO failed to consider price in establishing the competitive range, and Plaintiff and Intervenor were

prejudiced, GSA must establish a new competitive range that comports with the requirements of the Solicitation and the FAR."

Once such a new competitive range is established, Braden said, the SSA may use existing technical and price evaluations to determine which proposal represents the best value to the agency.

The FedBizOpps Web site provides the single governmentwide point of entry for procurement opportunities over \$25,000.

GAO Plans to Review Targeted Schedules To Ensure Competitive Market Pricing

As part of a multifaceted effort to clarify the rules that apply to acquisitions involving the Defense Department, the General Services Administration is planning to conduct "a comprehensive review of targeted GSA schedules" to ensure that competitive market pricing has been established.

GSA also is expanding its customer compliance survey for fiscal year 2007 to include use of all GSA contract vehicles and compliance with DOD competition requirements, the agency said in its latest update on progress under a memorandum of understanding signed by the two agencies last December.

The MOU was part of a renewed effort by the two agencies to better define their "operational relationship." In the MOU, GSA agreed to adhere to DOD fiscal policy in acquisitions involving the department, and to make sure that pricing on its contract vehicles and services represents best value on a contract/order basis and that its fee structure is the lowest possible commensurate with the service provided.

According to GSA's March monthly update on the GSA/DOD partnership, GSA's Federal Acquisition Service is drafting a statement of work for a market basket pricing tool for use in the targeted review of its schedules. The review is to be completed by next September, the update says.

GSA also has begun what will be an ongoing "follow-on review" of compliance with DOD competition requirements, including Section 803 of the fiscal year 2002 defense authorization act (Pub. L. No. 107-107) (78 FCR 483, 10/29/02). Section 803 restricts the use of waivers from competition requirements for task orders issued under Federal Supply Schedule (FSS) and multiple award contracts (MACs). It requires that for orders exceeding \$100,000, DOD must solicit offers from all contractors that are offering the desired services under a MAC.

GSA Head Asked to Go Before House Panel To Answer Charges of 'Questionable Conduct'

Citing "new allegations of questionable conduct" by the head of the General Services Administration, Lurita Doan, Rep. Henry Waxman (D-CA), chairman of the House Oversight and Government Reform Committee, March 6 asked the administrator to appear before the panel March 20 to respond to questions regarding alleged improprieties that surfaced as part of the committee's investigation of what Waxman has described as "multiple procurement irregularities at GSA" under Doan's leadership.

Waxman said in his letter that the committee's investigation of whether Doan attempted to give a no-bid contract to the company of a longtime friend, Edie Fraser, revealed that Doan had a longstanding relationship with Fraser "that has not been previously disclosed," that Fraser used "her professional connections" to advance Doan's nomination to GSA and provide "personal favors" to the administrator and her family, and that Fraser continued to provide services to Doan after she became administrator "with the expectation of payment from the agency."

Waxman initiated the investigation Jan. 19 after the *Washington Post* reported that Doan approved the award of a \$20,000 contract to Public Affairs Group Inc. for a report on GSA use of minority- and women-owned businesses. Documents from GSA and other information "raise further questions about the contract" with Fraser and "appear to conflict with your public assertions that you supported termination of the contract," Waxman wrote in his March 6 letter. "In fact, there is evidence that you continued to push your staff behind the scenes to find a way to award the contract."

Waxman added that he was informed of "several new allegations of questionable conduct" following his Jan. 19 letter seeking information from Doan about "multiple procurement irregularities" at GSA. He specifically referred to information suggesting that, during a teleconference last January, Doan requested that GSA officials find ways to help Republican political candidates. The matter has been referred by the GSA inspector general to the Office of Special Counsel for investigation of possible violations of the Hatch Act, Waxman said. The Hatch Act prohibits partisan campaign activities on federal property.

Questions also have been raised regarding Doan's attempt to ensure the award of an information technology contract to Sun Microsystems, Waxman said. "As I understand it, a GSA contracting officer refused to award a contract to Sun Microsystems after an audit by the inspector general determined that the company was overcharging the federal government in comparison to discounts offered to comparable commercial customers," Waxman said.

"I have been told that you criticized the position of the IG and the GSA contracting official," and that, two days later, "the contracting official was replaced and the official's successor approved the contract on terms that could cost the taxpayer millions of dollars," Waxman wrote.

GSA responded with a statement saying the administrator "looks forward to meeting with Chairman Waxman and his committee on the 20th to discuss GSA. As always, GSA will cooperate fully with the committee. It is inappropriate, however, for GSA to comment further on the upcoming congressional hearing."

GSA earlier issued a statement saying the incident involving the contract with Public Affairs Group Inc. "has already been reviewed" by a longtime career attorney "and no improprieties have been found."

In addition to information regarding the contract to Fraser's company, Waxman last January sought communications, records, and documents to resolve questions as to whether Doan:

- intervened in suspension proceedings involving five major contractors--KPMG, Ernst & Young, Pricewaterhouse Coopers, Booz Allen Hamilton, and BearingPoint Inc.--that allegedly performed work for the government while failing to disclose expense rebates received from airlines, car rental firms, hotels, and travel service providers; and
- sought or planned to limit funding for the GSA inspector general or otherwise restrict the IG from conducting pre-award audits of GSA contractors.

Waxman's letter is available at: <http://oversight.house.gov/story.asp?ID=1200>.

JWOD Transitioning to 'AbilityOne,' Issues Updated Pricing Memoranda

The head of the federal agency responsible for the administration of the AbilityOne program, formerly known as the JWOD program, recently issued a memo to federal agency chief acquisition officers and senior procurement executives to update pricing procedures for products and services purchased from nonprofit agencies under the Javits-Wagner-O'Day Act.

Leon Wilson, executive director of the Committee for Purchase From People Who are Blind or Severely Disabled, said in the Feb. 12 memo that the pricing updates for the AbilityOne program "build upon previous pricing procedures, focusing on negotiations and price analysis by emphasizing use of market price indicators and market research."

The program implements the Javits-Wagner-O'Day Act by providing individuals who are blind or severely disabled with jobs manufacturing and delivering products and services to the federal government.

According to a list of frequently asked questions attached to Wilson's memo, two pricing memoranda went into effect Feb. 1 to "implement decisions of the Committee regarding the Central Nonprofit Agency (CNA) fee ceiling, subcontracting, and use of market research."

Since "most upcoming service price negotiations will be targeted for the beginning of the Federal Fiscal Year on Oct. 1, 2007, and most commodity products are not due for price changes until January 2008, there should be adequate time for all parties to incorporate the provisions of these memoranda into the FY 2008 pricing cycle," the attachment said.

Although the committee attempts to keep its pricing procedures consistent with those under the Federal Acquisition Regulation, it has statutory authority to establish a "fair market price" for AbilityOne contracts that takes precedence over pricing provisions in the FAR.

Separately, under a final rule published in the Nov. 27, 2006, *Federal Register*, the former JWOD program has been renamed AbilityOne to give the program a "more unified identity" and "to show a connection between the program name and abilities of those who are blind or have other severe disabilities." An 18-month transition plan for the name change is now underway.

More information about the committee is available at: <http://www.jwod.gov/jwod/index.html>.

Rangel Says No to Pre-Conference Deal with Senate on Small-Business Tax Breaks

House Ways and Means Chairman Charles B. Rangel last month shut the door on pre-conference negotiations with top Senate tax writers to resolve a dispute over the size of a package of small-business tax breaks to be tied to the minimum wage bill.

In saying he would not agree to such a deal, Rangel, (D-NY) cited frequent instances over the past six years, when the GOP held the majority, in which he was excluded from conference negotiations. Rangel said he believed that the best venue for resolving the dispute over the small-business tax package would be in formal conference negotiations. "No sense having a conference if you're having a pre-conference," Rangel said.

Rangel declined to consider an idea floated last week by Charles E. Grassley of Iowa, the ranking Republican on the Senate Finance panel, for a meeting among Grassley, Senate Finance Chairman Max Baucus, D-Mont., and Rangel and Jim McCrery of Louisiana, the ranking member on Ways and Means. Grassley had proposed they meet to discuss differences between the House-passed \$1.3 billion small-business tax measure (HR 976) and the \$8.3 billion package of small-business tax breaks attached to a Senate-passed proposal to raise the minimum wage by \$2.10 over two years to \$7.25 (HR 2).

In turning down the invitation, Rangel recalled in an interview that senators seemed to have little problem in the recent past when former Ways and Means Chairman Bill Thomas, (R-CA) set aside the usual rules for conference negotiations by excluding House Democrats from negotiating sessions. "They wouldn't let me into the conference," Rangel said of past conference negotiations

when he sat on the Ways and Means panel representing the minority party. "Now they want two conferences. It's unbelievable."

Nonetheless, Rangel said he was continuing to talk individually with Baucus and Grassley, who he has known since both senators served in the House in the 1970s. He said there had been no progress in those talks in resolving differences between the chambers over the size and scope of the package of small-business tax breaks intended to pave the way for final passage of the minimum wage increase, a priority for Democrats in the 110th Congress.

While the Senate considers the House-passed small-business tax bill, Rangel said House Speaker Nancy Pelosi, (D-CA) was continuing with her plan to incorporate the proposal to raise the minimum wage and provide \$1.3 billion in small-business tax breaks with the supplemental war spending bill that will be considered in the House Appropriations Committee Thursday. Of the House negotiating stance on the size of the small-business tax package, he said, "We haven't changed at all in the House. Nothing. Except the leader wants to put it in the supplemental."

Memo Reviews JWOD, RSA Applicability To Military Dining Facility Contracts

The Defense Department recently issued guidance to the military services and defense agencies regarding the application to military dining facility contracts of two different and potentially conflicting preference programs intended to benefit disabled vendors.

The guidance, which is set out in a March 16 memo from Director of Defense Procurement and Acquisition Policy Shay Assad, largely defers until regulations are issued any comprehensive discussion of the sometimes litigated question of whether the Javits-Wagner-O'Day Act (JWOD) or the Randolph-Sheppard Act (RSA) applies to a particular procurement.

However, the memo reviews the parameters of Section 856 of the fiscal year 2007 defense authorization act (Pub. L. No. 109-364), which addressed the applicability of the two programs to military dining facility contracts in effect as of its enactment. According to the memo, Section 856 provides that:

- (1) The RSA does not apply to full food services, mess attendant services, or services supporting the operation of a military dining facility that, as of the Oct. 17, 2006, date of enactment, were services on the procurement list established under Section 2 of JWOD.
- (2) JWOD does not apply at the prime contract level to any contract entered into by DOD as of the date of enactment with an SLA under the RSA for operation of a military dining facility.
- (3) JWOD applies to any subcontract entered into by a DOD contractor for full food services, mess attendant services, and other services supporting the operation of a military dining facility.

JWOD requires government agencies to purchase selected products and services from nonprofit agencies employing people who are blind or otherwise severely disabled. The RSA requires that priority be given to blind persons represented by state licensing agencies (SLAs) for the operation of vending machines on federal property.

In recent years, the interaction between the two programs has engendered litigation, because the RSA defines "vending facilities" to include cafeterias and some SLAs have argued that DOD must apply the RSA priority for blind vendors in awarding military mess hall contracts worth millions of dollars.

The matter was complicated when, after a provision in the FY 2004 defense authorization act resolved the controversy as to certain contracts in favor of JWOD, that provision was repealed by a provision in the FY 2005 defense authorization act.

Assad said in the memo that, in accordance with a requirement of Section 848 of the FY 2006 defense authorization act (Pub. L. No. 109-163), DOD, the Department of Education (which administers the RSA), and the Committee for Purchase From People Who Are Blind or Severely Disabled (which administers JWOD) in September 2006 submitted to Congress a "joint statement of policy" concerning the application of the two acts to military dining facilities contracts.

However, he advised that the joint statement of policy should not be cited in individual solicitations until it is implemented in complementary regulations to be issued by DOD and ED.