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Small Business Spotlight:



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NEWS:**GSA Head Unveils Cost Savings Plan For Assisted Acquisition Services Program**

The General Services Administration Sept. 7 announced plans to address the declining revenues of its Federal Acquisition Service (FAS) Assisted Acquisitions Services program by moving 250 of the more than 600 employees in that office elsewhere in the agency.

While FAS as a whole is expected to finish out this fiscal year "in the black," its assisted acquisitions services (AAS) line of business is projected to post a loss of \$50 million for the fiscal year, FAS Commissioner Jim Williams told reporters. The plan to move employees from the AAS office to other jobs within GSA for which they are qualified recognizes that the program has "more people than we need" and addresses the "drop in revenue" caused by moves on the part of the Defense Department and other federal agencies to perform for themselves functions for which they previously relied on GSA, Williams added.

GSA Administrator Lurita Doan said the reorganization, slated to begin at the end of this month and be completed by the end of this calendar year, is intended to "align costs with actual revenue" while ensuring that AAS is "still a strong business line." It "is not enough to launch new programs," she said in a press teleconference, and reiterated her commitment to "modify programs that are not performing successfully" or "meeting expectations."

Doan described GSA's assisted acquisition services program as a "work in progress," saying that it provides services that are very much in demand. She stressed, however, that "fiscal discipline" is necessary to "pave the way for future financial stability and growth, and ensure GSA's place as the federal government's premier acquisition agency." Both Doan and Williams said the cost savings plan will not affect the quality of assisted acquisition services and that other programs within the agency will benefit from the transfer of AAS employees. As it now stands, no reductions-in-force, early-out/buyouts, or position downgrades are anticipated in order to complete the reorganization. As a result of the plan, AAS is expected to break even by the end of FY 2008.

AAS is one of 10 core offices within FAS, which was created in September 2005 as part of a GSA reorganization of acquisition services that was intended to address costly duplication of efforts in providing products and services to federal agencies. The role of the AAS office is to provide expert technical, acquisition, and project management support services to FAS customers on a fee-for-service basis to assist them in acquiring and implementing professional services and information technology products, services, and solutions.

The agency reorganization--which involved merging the old Federal Technology Service and the Federal Supply Service--has resulted in changes to the services provided by GSA. FAS has expanded into new areas of professional services related to acquisitions, including pre-award and post-award services for agencies that are conducting internal acquisitions, according to GSA. Annual sales by FAS amount to \$56 billion, more than one-sixth of the entire federal procurement budget, the agency said. Acquisition programs managed by FAS include IT, telecommunications, furniture, tools, office products and supply items, as well as travel, motor vehicle, and credit card services.

GAO Upholds IRS Rejection of OfficeMax For Failure to Meet 'Specific Requirement'

The Internal Revenue Service reasonably rejected a proposal by OfficeMax Inc. to provide next-day, desktop delivery of office supplies because the company's order management system could not meet a mandatory solicitation requirement, the Government Accountability Office determined July 19 (*OfficeMax Inc.*, GAO, B-299340, 7/19/07).

GAO found that the solicitation for blanket purchase agreements (BPAs) clearly advised vendors that compliance with the "fill or kill" requirement--that is, to provide an ordering system that completely rejects any line item that cannot be filled entirely, so that the purchaser can seek the supplies from another vendor, rather than partially filling the order--was a mandatory requirement, even though it was not labeled as such.

"[T]he fact that a solicitation states that certain mandatory requirements will be evaluated on a pass/fail basis does not mean that a vendor cannot be found technically unacceptable for failing to comply with mandatory requirements that are not the subject of pass/fail evaluations," GAO said.

Here, the request for quotations (RFQ) stated that offerors would be evaluated as to whether they met all "minimum requirements" of the statement of work (SOW), but did not define which of these requirements were minimum or mandatory. The SOW identified the "fill or kill" policy as a "specific requirement," and explained that orders must be completed in full or cancelled entirely. The RFQ also stated that if "the initial vendor chosen by the order point cannot fill the entire quantity of a line item being ordered then that line item must be 'killed,'" and further that "[n]o partial quantities of line items are to be filled."

"On this record, we conclude that the RFQ clearly advised vendors that the fill or kill policy was a mandatory requirement because the solicitation cannot be reasonably interpreted to allow a vendor whose quotation did not commit to comply with the policy to receive a BPA," GAO said. Further, the IRS reasonably concluded that OfficeMax did not comply with this requirement, GAO said. In its final round of clarifications, OfficeMax indicated that its "systems are not set up" to kill orders when some inventory is on hand, even though that inventory is not sufficient to meet the full order quantity.

While GAO agreed with OfficeMax that the IRS never advised the company that its approach to the fill or kill requirement was unacceptable, GAO found that OfficeMax was not prejudiced by this failure "because, despite numerous indications that the IRS was concerned about this issue, OfficeMax advised that it did not have the service that the agency required." Additionally, OfficeMax never clearly stated that it could have or would have revised its quotation had it been advised of this issue, GAO said.

Senate Adopts Contracting Provisions In Passing FY 2008 DHS Spending Bill

A number of amendments related to contracting at the Department of Homeland Security were agreed to by the Senate before its July 26 passage, by an 89-4 vote, of the fiscal 2008 Homeland Security appropriations bill (H. R. 2638).

Contracting provisions in the Senate version of the DHS spending bill include language that would:

- require the department to link payment of contract award fees to positive acquisition outcomes;
- eliminate the Transportation Security Administration's exemption from federal acquisition laws and the Federal Acquisition Regulation;
- ensure that DHS contractors do not receive awards valued at more than \$5 million if they have unpaid tax debts;
- tie certain expenditures under the Coast Guard's Deepwater program to completion of analyses of alternatives; and
- prohibit "no-bid earmarks" in connection with DHS contract awards.

As originally offered by Sens. Charles Grassley (R-Iowa) and James Inhofe (R-Okla.), another amendment would have required contractors awarded homeland security contracts to use an electronic employment verification system--often referred to as the "basic pilot program"--to prevent illegal immigrants from working on DHS contracts. However, before the Senate agreed to the amendment, it voted to delete the reference to contractors and to leave only DHS agencies subject to the mandate to use the basic pilot system in hiring employees. Grassley is the sponsor of similar employment verification language that he hopes to attach to the Senate version of the FY 2008 defense authorization bill (H.R. 1585, S. 1547). That bill was pulled from the floor of the Senate July 18 by Senate Majority Leader Harry Reid (D-Nev.) after hot button Iraq policy issues stalled debate.

An amendment to the DHS spending bill sponsored by Sen. Hillary Clinton (D-N.Y.) and agreed to by voice vote would require all DHS contracts that include contractor award fees or incentives to incorporate acquisition outcome terms--related to cost, schedule, and performance--to be linked to the payment of award fees. The language is less specific, but similar in concept, to contract award fee provisions that have been included in recent defense authorization acts. The Government Accountability Office has faulted the Coast Guard and defense agencies for paying contractors award fees despite poor performance and acquisition outcomes, and the DHS inspector general has raised similar questions regarding some of the department's award fee payments.

"The corrupt practice on the part of DHS to give bonuses to contractors for work they didn't even perform has to come to an end," Clinton said in a July 27 statement. "My amendment ensures contractors will have to earn any award fee that they receive."

The Senate also agreed to an amendment sponsored by Sens. John Kerry (D-Mass.) and Olympia Snowe (R-Maine) that would eliminate the Transportation Security Administration's exemption from general federal procurement law and the FAR. Currently, TSA is subject instead to the Federal Aviation Administration's agency-unique Acquisition Management System. This amendment is identical to one offered by Kerry and Snowe last year, which was adopted by the Senate but was not enacted in the FY 2007 DHS funding measure.

The Professional Services Council July 24 wrote Kerry and Snowe expressing support for the amendment, saying that bringing TSA under the rules applicable to DHS and most other federal agencies will "increase competition, expand opportunities for greater small business participation, provide greater accountability and transparency in . . . procurement processes, and provide greater options for addressing all the challenges of the department's acquisition workforce."

DHS, through the Federal Emergency Management Agency, would be required to "consider implementation, through fair an open competition, of management, tracking and accountability systems to assist in the managing of grants, allocations, distribution, expenditures, and asset tracking," according to language sponsored by Sen. Judd Gregg (R-N.H.) and agreed to by the Senate. The language also would direct DHS to consider efficiencies that could be derived from cooperative purchasing agreements.

House FY 2008 DOD Spending Bill Boosts Funding for Contract Oversight Agencies

The \$459.6 billion fiscal year 2008 defense spending bill approved by the House Appropriations Committee July 25 seeks to improve Defense Department oversight of contracts by increasing the budgets of key agencies with contract management responsibilities, according to a summary of the bill.

The bill (number not yet available) would increase funding for the Defense Contract Audit Agency by \$12 million, the Defense Contract Management Agency by \$17 million, and the DOD Office of Inspector General by \$24 million. The bill also would dedicate \$21 million to support the temporary assignment of 600 contract specialists from the General Services Administration "to help DOD oversee contracts," the summary said.

At the same time, the bill would reduce funding for contracted services by 5 percent across the military services, "in anticipation of savings from improved management and oversight" of contracts, the summary said. The cost of DOD operation and maintenance (O&M) service contracts increased more than 73 percent from 2000 to 2005, "but oversight has actually decreased," the committee said in the summary. The bill also would require a report from DOD on acquisition workforce needs and "tools to recruit and retain these personnel in order to provide adequate management of contracts and oversight of contract performance," the summary said. The report would be due 90 days after the spending bill is signed into law.

Like the FY 2008 defense authorization measure (H.R. 1585) passed by the House May 17, the House version of the DOD appropriations bill calls on the Pentagon to address the use of private firms to supply security services in Iraq and Afghanistan. Under the appropriations bill, the secretary of defense would be required, within 90 days of enactment, to develop "minimum standards for all contractors performing security functions and to establish a clear set of rules of engagement for those operating in Iraq and Afghanistan," the bill summary said.

The spending bill also includes two provisions that the summary says address contracting out. One restricts payment of award fees to contractors that fail to meet contractual requirements; the other "fences" 10 percent of all O&M funds appropriated in the bill until the Pentagon submits a report on contracting out required by the FY 2007 Iraq supplemental spending bill.

The FY 2007 supplemental bill agreed to by Congress late in May prohibits DOD from obligating more than 85 percent of the funds appropriated by the bill for O&M until the department submits to the congressional defense committees a report detailing its use of services contracts in support of U.S. military operations in Iraq and Afghanistan. The supplemental set an Aug. 1 deadline for submission of the report.

The bill approved by the committee would provide \$99.6 billion for procurement. This amount is \$18.7 billion, or 23 percent, above 2007--the largest increase in the bill, the summary said. Research and development would be funded at \$76.23 billion, or \$1.11 billion above the president's request and \$508 million above 2007. "These funds are used for basic research, advanced research on and development of weapons systems, and military medical research," according to the summary.

SBA Proposes Changing Calculation Method For Employee-Based Size Determinations

The Small Business Administration July 27 proposed changing the way it calculates the number of employees a company has for purposes of determining whether it meets the size standards governing eligibility for federal small business programs, including procurement programs.

Under the proposed rule, SBA would no longer calculate a firm's average number of employees based on a rolling average over the preceding 12 months, but instead would base the size calculation on the average number of employees over the last three completed years. "The proposal simplifies the calculation of the average number of employees, reduces the burden on small businesses, and better defines the size of a small business where number of employees is the measure for the size standard," according to the proposed rule.

Under the rule, size calculations would be based on and coincide with a company's calendar year submission of Form W-3, "Transmittal of Wage and Tax Statement," to the Internal Revenue Service. Form W-3 would allow SBA to rely on a "government-validated document" to verify employment size, relieving the agency of its current practice of reviewing payroll records to

determine size status for size standards based on number of employees, the rule said. If a company has been in business for less than three calendar years, the average number of employees would be calculated based on an annualized figure for the time it has been in operation. If a company has not filed a Form W-3 for a period that must be included in the employee number calculation, SBA would be able to use other information, such as payroll records, to show the total number of employees for the relevant period, the rule said.

SBA already requires firms to submit their IRS tax returns for monetary-based size standards, which consider receipts, net income, net worth, and financial assets in determining a company's eligibility for federal small business programs. "This method of validating receipts has worked well," SBA said in the proposed rule. SBA said it had considered using a company's total number of employees for only its last calendar year, but decided against doing so because "trends in the economy fluctuate over a period of years." The three-year average period used when size standards are calculated in receipts "has always taken these fluctuations into account," providing for "a more stable measure of a concern's size," SBA said in the rule.

In proposing to extend the three-year period to calculations of number of employees, SBA said it is "providing consistency in the way it determines size by both receipts and employees." For calculating receipts for size purposes, SBA uses an average of annual receipts over the concern's last three completed fiscal years.

SBA also explained that the proposed calculation, if adopted, would require a concern to calculate its employment size only once a year, and that calculation would apply until the beginning of the next calendar year. This policy would coincide with the regulatory requirement for a concern to update its size status annually on the Central Contractor Registration (CCR) and On-Line Certifications and Representations (ORCA) databases, SBA said. With the advent of e-government systems in federal acquisition, a concern must update its CCR and ORCA information at least once a year and every time its small business size status changes. This could occur many times during the year using the current employee calculation method, SBA said, and would be extremely burdensome on small businesses.

In the proposed rule, SBA said it is no longer considering converting any industries where the size standard is measured by average annual receipts to employee-based size standards. It also said that it will not change the way it calculates number of employees to include full-time equivalents. SBA in December 2004 sought comments on alternative methods of calculating the size of a business based on number of employees, including the feasibility of using FTEs in size calculations. Most of the comments supported the concept of FTEs, but provided "no basis ... to justify a significant change in policy of this nature," SBA said in the new proposed rule. It also pointed out that one response to the FTE proposal raised the specter of "endless disputes and size status protests concerning how to compute the number of FTEs."

SBA had been urged to modify the calculation method for employee-based size standards in comments responding to a March 2004 proposal to simplify and restructure the size standards. However, that proposal was withdrawn in July 2004 after a large number of commenters expressed concerns.

Comments on the proposed rule are due 9/25/07 (72 Fed. Reg. 41,240, 7/27/07). The proposed rule is available at:

<http://a257.g.akamai.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-14492.pdf>.

Veterans Affairs Panel Explores Compliance With Small Business Subcontracting Plans

The need for an enforcement mechanism to ensure that prime contractors adhere to the goals set in their small business subcontracting plans was considered during a July 26 hearing on contract bundling held by the House Veterans' Affairs Economic Opportunity Subcommittee.

The hearing was convened to discuss ways to mitigate the effects of contract bundling on small businesses, particularly those owned by veterans and service-disabled veterans. Contract bundling refers to the consolidation of federal government requirements, at least one of which previously was performed by a small business, into large packages that discourage competition by small businesses. Contract bundling is "one of the biggest obstacles to small business growth and creates a lack of capacity which ultimately reduces competition," Charles Maurice Baker, president of MCB Lighting & Electrical and a retired chief of facilities for Andrews Air Force Base, told the subcommittee.

Observing that those who seem "to have been impacted more severely by contract bundling" are service-disabled veterans, Baker said it is "ironic that the group that makes tremendous sacrifices in fighting for our freedom throughout the world has to come back home to fight not to be ignored and to fight for their economic well being." The failure of the federal agencies, particularly the Defense Department, to meet a 3 percent set-aside goal for service-disabled, veteran-owned small businesses (SDVOSBs) was explored by the subcommittee at an earlier hearing in July. DOD awarded fewer than 1 percent of its contracts to SDVOSBs in fiscal year 2005.

Federal agency representatives who testified at the hearing--including Anthony Martoccia, director of DOD's Office of Small Business Programs, and Scott Denniston, director of the Office of Small and Disadvantaged Business Utilization at the Veterans Affairs Department--emphasized their agencies' commitment to ensuring opportunities for small businesses and SDVOSBs. They stressed that agencies considering a bundled acquisition are required to analyze alternatives and show that bundling will result in substantial benefits and savings to the agency.

However, Lt. Col. James Blanco, assistant to the director of the Army's Office of Small Business Programs, said in his prepared testimony that while the Army has taken a proactive approach to mitigate the impact of bundling on small business, it also believes that "the dollar amount of realized savings required to justify bundling is unrealistically low." The current requirement is that a contracting officer must demonstrate savings of 10 percent of the estimated contract or order value if the value is \$86 million or less, or 5 percent of the estimated contract value if the value exceeds \$86 million.

Each of these witnesses also discussed the importance of requiring measures to strengthen compliance by large business prime contractors with their subcontracting plans--a strategy that also was among those outlined by Calvin Jenkins, deputy associate administrator for government contracting and business development at the Small Business Administration.

However, Anthony Jimenez and Lisa Wolford, both of whom head SDVSOBs and do business with the federal government, cautioned members of the subcommittee that the use of small business subcontracting goals for large firms that receive bundled contracts does not mitigate the adverse effects that contract consolidation has on small businesses. "Perhaps the most overlooked contract bundling problem for small businesses is the myth that big businesses who receive these very large bundled contracts will make it up to the small businesses in their subcontracting plans," Jimenez said. In many cases these small business goals are not reached, he said, and there is no current standard by which large businesses are measured and graded with respect to the achievement of their subcontracting plans or goals.

There is little evidence that any large business has ever been assessed liquidated damages for failing to make a good faith effort to comply with its subcontracting plans in accordance with Federal Acquisition Regulation 52.219-16, Jimenez said. "Many of the contracting officers I have worked with and know feel that any effort to penalize a large business for 'Failure to make a good faith effort to comply with the subcontracting plan' as required in FAR 52.219-16 would be a waste of time," he added.

Wolford similarly disputed the argument that increasing subcontracting goals for large prime contractors winning a bundled contract is sufficient to counter the adverse impact of bundling on small businesses. "When small businesses are relegated to the role of subcontractors, they do not have the opportunity to control their own destiny or truly add innovation to the federal marketplace," she said in her written testimony. "This is because the federal government's contract is only with the prime contractor, they do not have privity of contract with the subcontractor." Subcommittee Chairwoman Stephanie Herseth Sandlin (D-S.D.) and Rep. John Hall (D-N.Y.) suggested that better methods of ensuring that prime contractors stick to their subcontracting plans may be necessary.

New legislative language regarding contract bundling is included in bipartisan legislation (H.R. 1873) approved by the House earlier this year. That measure, the "Small Business Fairness in Contracting Act," includes provisions intended to:

- ensure that more large contracts will be subject to a bundling analysis and potentially broken into smaller pieces for small business participation; and
- require agencies to take into consideration compliance with small business subcontracting plans when evaluating companies competing for federal contracts.

Senate Panel Approves Bipartisan Bill Calling for Improved Oversight of Contracts

A modified version of legislation (S. 680) calling for improved oversight of federal contracts and enhanced competition in federal procurement sailed through the Senate Homeland Security and Governmental Affairs Committee Aug. 1, winning approval on a voice vote.

No amendments to the Accountability in Government Contracting Act were formally considered during the committee markup, but the substitute offered by ranking member and bill sponsor Sen. Susan Collins (R-Maine) included new provisions addressing organizational conflicts of interest (OCIs) and award and incentive fees. Committee Chairman Joseph Lieberman (I/D-Conn.), who is cosponsoring the bill with Collins, authored language calling on the Office of Federal Procurement Policy to "create new, uniform, governmentwide policies aimed at preventing and mitigating organizational conflicts of interest in federal contracting." The provision also requires OFPP to develop similar policies aimed at preventing personal conflicts of interest by contractor employees in federal contracting.

With respect to OCIs, the bill directs OFPP to: develop a standard OCI clause for inclusion in solicitations and contracts; address conflicts that may arise in the context of developing requirements and statements of work, the source selection process, and contract administration; and ensure adequate OCI safeguards "in situations in which contractors are employed by the government to oversee other contractors or are hired to assist in the acquisition process." With respect to personal conflicts of interest, the bill calls on OFPP to: determine "whether greater disclosure, specific prohibitions, or reliance on specified principles will accomplish the end objective of ethical behavior"; identify types of contracts that raise heightened concerns for potential conflicts of interest; and consider developing a standard ethics clause on contractor responsibility for inclusion in solicitations and contracts.

Another new provision included in the substitute and authored by Sen. Daniel Akaka (D-Hawaii) directs OFPP to develop guidance and "detailed implementation instructions" on the appropriate use of award and incentive fees in federal acquisitions. The bill specifies that the guidance must:

- ensure that all new contracts using award fees link payment of the fees to acquisition outcomes, namely program cost, schedule, and performance;
- establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;
- provide guidance on the circumstances in which contractor performance may be judged to be "excellent" or "superior" and the percentage of the available award fee that contractors should be paid for such performance;
- establish standards for determining the percentage of the available award fee, if any, that contractors should be paid for performance that is judged "acceptable," "average," "expected," "good," or "satisfactory";
- ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory or that does not meet the basic requirements of the contract;

- provide specific direction with respect to rolling over award fees that are not earned in one period to a subsequent fee award period;
- ensure that agencies collect and evaluate data on award incentive fees paid to contractors; and
- provide performance measures to evaluate the effectiveness of award and incentive fees as a "tool for improving contractor performance and achieving desired program outcomes."

This award fee language parallels that of Section 814 of the fiscal year 2007 defense authorization act, which directed the Defense Department to develop such guidance to apply to its own award fee contracts.

DOD Wants Longer Interim Payment Period On Cost Reimbursable Contracts for Services

The Defense Department Aug. 2 proposed to change its rules governing interim payments on cost-reimbursement contracts for services, to provide for payment within 30 days--rather than the current 14 days--when the contractor is not a small business.

The move is intended to allow DOD "to better cash manage payments without having a significant impact on small business concerns," which would not be affected by the change, the Defense Acquisition Regulations System said in background information on the proposed rule. In addition, the change "is consistent with the policies of other government agencies, which do not pay in 14 days," the rule writers said, noting that these payments are subject to the Prompt Payment Act. The issuance of the proposed rule, which would modify the Defense Federal Acquisition Regulation Supplement (DFARS), indicates that the DOD inspector general has prevailed in a dispute that surfaced last year between the IG and senior DOD officials, including Director of Defense Procurement and Acquisition Policy Shay Assad.

In a Sept. 1, 2006, report, the DOD IG said that DOD's policy of making interim payments on cost-reimbursement contracts for services within 14 days resulted in \$9.4 million in lost interest to the department during fiscal year 2005 and violated the Prompt Payment Act. The IG argued that the Prompt Payment Act establishes a 30-day due date for contract payments and generally requires an agency to make payments no more than seven days prior to this date. The IG maintained that a change in DOD policy in this regard would yield the department more than \$56 million in interest between FY 2006 and FY 2011. However, Assad and other DOD officials disagreed that the 14-day due date for such payments--established by DFARS 232.906--violated the Prompt Payment Act.

"The Prompt Payment Act and all subsequent implementation regulations establish the payment due date for the purpose of determining if the payment is late and to assess late payment penalties, and is not intended to prohibit agencies from paying a contractor earlier than 30 days," Assad asserted in comments on the IG's report. Subsequently, in a Nov. 15, 2006, memo, Assad reminded the military services and defense agencies that cost-reimbursement contracts for services should include a standard due date of 14 days when contracting officers plan to make interim payments to contractors within that time frame. The proposed rule would modify DFARS 232.906, on contract financing, as well as DFARS 216.307, on contract types, and corresponding contract clauses.

Final DFARS rules issued on the same date address:

- **Berry Amendment restrictions--clothing materials.** The rule implements Section 833(b) of the fiscal year 2006 defense authorization act (Pub. L. No. 109-164), which expanded the foreign source restrictions applicable to the acquisition of clothing to also include clothing materials and components, other than sensors, electronics, and other items added to and not normally associated with clothing and clothing materials or components. The rule adopts without change the interim rule published Jan. 22, 2007.
- **Waivers of certain domestic source restrictions.** The rule requires the posting of a notice on the FedBizOpps Web site, within seven days after award, of contracts exceeding the simplified acquisition threshold for the acquisition of: (1) certain clothing, fiber, yarn, or fabric items when DOD has determined that adequate domestic items are not available; or (2) chemical warfare protective clothing when an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country. The interim rule published Oct. 4, 2006, to implement Section 833(a) of the FY 2006 defense authorization act is adopted as final without change.

- **Tiered evaluation of offers.** The rule prohibits DOD use of tiered evaluation--also known as "cascading set-asides"--in awarding DOD contracts or task orders, unless the contracting officer has conducted market research and, after such research, is unable to determine whether a sufficient number of qualified small businesses are available to justify limiting the competition to such businesses. The final rule, which implements Section 816 of the FY 2006 defense authorization act, makes only minor changes to the interim rule issued Sept. 8, 2006.

Comments on the proposed rules regarding payments on cost-reimbursement contracts for services (72 Fed. Reg. 42,366, 8/2/07) and unique item identification and valuation (72 Fed. Reg. 42,367, 8/2/07) are due Oct. 1. The final rules on Berry Amendment restrictions (72 Fed. Reg. 42,315, 8/2/07), the Berry Amendment waiver notification requirement (72 Fed. Reg. 42,315, 8/2/07), and limitations on tiered evaluation (72 Fed. Reg. 42,313, 8/2/07) became effective Aug. 2.

GSA Selects 29 Firms for Award Under 10-Year, \$50B Alliant IT GWAC

The General Services Administration announced July 31 that it has selected 29 firms for award under the Alliant information technology governmentwide acquisition contract.

The contract, valued at \$50 billion, has a five-year base period and one five-year option. A separate Alliant Small Business IT GWAC, a \$15 billion set-aside contract for small business, will be awarded in conjunction with the Alliant GWAC and is expected to include between 40 to 60 awards. Alliant is intended to provide federal agencies streamlined access to a broad range of management and technical support services, enabling total IT solutions to be acquired under a pre-competed multiple award, indefinite delivery/indefinite quantity contract, according to GSA.

The contract also supports objectives of the Federal Enterprise Architecture program and has been developed within the framework prescribed by new IT investment budget guidance issued by the Office of Management and Budget, allowing agencies to easily comply with federal policies governing IT investments, GSA said. GSA issued a second round of requests for proposals for the two GWACs in September 2006, after revising its initial strategy to allow firms to "ramp" on or off the Alliant contracts. The first round of RFPs was issued in March 2005. The Alliant GWACs are replacements for the GSA ANSWER and Millenia IT GWACs

"With its expansive scope, access to the best in class in the private sector and ability to provide customized solutions tailored to agencies' unique IT needs, we can again prove that GSA is at the forefront of serving the acquisition needs of the federal government," GSA's Federal Acquisition Service Commissioner Jim Williams said in a statement.

The firms selected for award are: Accenture National Security Services LLC; Advanced Management Technology Inc.; Alion Science and Technology Corp.; AT&T Government Solutions Inc.; BAE Systems Information Technology; BearingPoint Inc.; Booz Allen Hamilton Inc.; CACI Inc. Federal; Computer Sciences Corp.; Dynamic Research Corp.; Electronic Data Systems Corp.; General Dynamics One Source LLC; Harris Corp.; Indus Corp.; International Business Machines Corp.; ITS Corp.; L-3 Communications Titan Corp.; Lockheed Martin Integrated Systems Inc.; ManTech Advanced Systems International Inc.; Modern Technologies Inc.; NCI Information Systems Inc.; QSS Group Inc.; Raytheon Company; RS Information Systems Inc.; Science Applications International Corp.; SI International Inc.; Systems Research and Applications Corp.; TASC Inc. (Northrop Grumman IT); and Unisys Corp.

SBA Scores Small Business Contracting; Ranks Most Agencies at Low End of Scale

The Small Business Administration Aug. 17 released its first ranking of federal agencies' efforts to reach their small business contracting goals and gave seven agencies top grades, five agencies middle grades, and 12 agencies low grades.

SBA also issued a goaling report for fiscal year 2006, showing that \$77.7 billion in federal contracts were awarded to small businesses that year, \$2.7 billion more than the previous year. The \$77.7 billion represents 22.8 percent of contracts, which is shy of the 23 percent governmentwide small business procurement goal. A revised goaling report for FY 2005, also released Aug. 17, shows that the share of contracts awarded to small businesses that year was \$4.6 billion less than previously reported, with 23.4 percent of contracts awarded to small firms rather than 25.4 percent as initially reported. The new data was derived after federal agencies identified miscoding and other problems in the contracting database--the Federal Procurement Data System-Next Generation.

Steven Preston, administrator of SBA, told reporters that the FY 2005 and 2006 data was "scrubbed" after it was determined that they contained a number of inaccuracies due to miscoding and other data errors. Preston and Office of Federal Procurement Policy Director Paul Denett last October directed federal agencies to check the accuracy of data on small business contracts, prompted by questions as to whether small business contracts and related contract actions "were actually awarded to contractors that were not small".

For similar reasons, SBA recently issued a new rule requiring small businesses holding long-term federal contracts to re-certify their size before the beginning of the sixth contract year and before any options are exercised extending the contract beyond that period. The rule, which took effect June 30, also requires small businesses to recertify their size following a contractor merger or acquisition or a novation.

With the improved reporting of data and the new recertification rule, the "bar is slowly going up," Preston said, making it more difficult for agencies to meet their small business contracting goals. "We did not want the Raytheons of the world to be considered small businesses," Preston added. With respect to the goals for particular small business programs, Preston said that only the target for small disadvantaged businesses has been met so far, but that SBA is "encouraged by the real gains in every category in 2006." According to the data, compared to FY 2005, contracts to companies owned by service-disabled veterans increased by 50 percent, from \$2 billion to \$3 billion; contracts to women-owned businesses increased by \$1 billion; contracts to small disadvantaged firms eligible for set-asides under Section 8(a) of the Small Business Act rose by \$700 million; and contracts to Historically Underutilized Business Zone firms rose \$1 billion.

At the top of the new SBA scorecard, with green ratings, are: the departments of Agriculture, Homeland Security, Energy, Transportation, Housing and Urban Development, and Veterans Affairs, and the Small Business Administration. At the bottom of the list, with red ratings, are: the departments of Defense, Interior, Education, Health and Human Services, and State, the Environmental Protection Agency, the General Services Administration, the National Space and Aeronautics Administration, the National Science Foundation, the Office of Personnel Management, the Social Security Administration, and the U.S. Agency for International Development. In the middle, with yellow ratings, are: the departments of Commerce, Justice, Labor, and Treasury, and the Nuclear Regulatory Commission. The scorecard will be updated quarterly.

Rep. Nydia Velazquez (D-N.Y.), chairwoman of the House Small Business Committee, responded to SBA's announcement Aug. 16 by criticizing the Bush administration's failure to meet the small business contracting goals. "Year after year, the federal government has failed to reach their small business contracting goals and this year is no exception," Velazquez said. "Once again, the government has neglected to take advantage of the innovations and quality products offered by small firms, resulting in billions of dollars that instead went to large government contractors."

Velazquez also said the latest data show "the clear need" for the Small Business Fairness in Contracting Act (H.R. 1873), which "will ensure that small businesses are able to compete for billions of dollars in contracts that will help them expand and prosper within their communities." Approved by the House earlier this year, the bill includes provisions intended to:

- ensure that more large contracts will be subject to a bundling analysis and potentially broken into smaller pieces for small business participation; and
- require agencies to take into consideration compliance with small business subcontracting plans when evaluating companies competing for federal contracts.

DOD IG: Bundling on Major IT Contracts Led to Missed Opportunities for Small Firms

The Defense Department office of inspector general recently released two audit reports indicating that defense contracting officials bundled contract requirements in two major information technology contracts without justification and selected inappropriate North American Industrial Classification System (NAICS) codes for the contracts.

In both cases--the Army Information Technology Enterprise Solutions-2 Services (ITES-2S) contract and the Air Force Network-Centric Solutions (NETCENTS) contract--the DOD IG determined that federal contracting policies were violated and, as a result, that small businesses missed out on contracting opportunities on DOD programs. Senior Army and Air Force contracting officials mostly disagreed with the IG's findings for their respective programs.

"ITES-2S is a bundled contract that improperly restricted small business competition and was unsuitable for small business award," the DOD IG said in an Aug. 9 report on the multiple-award, indefinite delivery/indefinite quantity contract, which is valued at \$20 billion over a three-year base period and three two-year option periods. The contract was the focus of two Government Accountability Office protests, each filed by the same five businesses in 2006. The Army responded to the first protest by withdrawing the initial awards and then re-awarding the contracts to the initial 11 contract awardees; in response to the second protest, the Army extended awards to the five protesting businesses.

According to the DOD IG, contracting officials for ITES-2S improperly consolidated contract requirements because they did not conduct market research to determine whether the consolidation was necessary and justified. Nor did they identify alternative contracting approaches that would have involved a lesser degree of consolidation, or perform an analysis to determine whether consolidation would result in significant benefits, the DOD IG added. Further, the contracting officials did not ask the senior procurement executive to decide if the consolidation was necessary and justified, as required by Defense Federal Acquisition Regulation 207.170.3.

Regarding the NAICS code selected for ITES-2S, the DOD IG said that code 517110--Wired Telecommunications Carriers-- "is the largest of all small business size standards" established by the Small Business Administration. While the Federal Acquisition Regulation requires that the size standard be assigned according to the NAICS definition that "best describes the principal nature of the service being acquired," the ITES-2S code was instead selected based on the size standard that was proposed, the IG said.

Similarly, in a June 29 report on the NETCENTS contract--a \$9 billion multiple-award, ID/IQ product, service, and total solutions contract for information systems networking--the DOD IG said because the Air Force selected a NAICS code that "does not match the greatest percentage of work identified in the original ceiling estimate as required for contracts requiring services and/or products from multiple industries," small businesses were disadvantaged.

Here also, the DOD IG said that the NAICS code selected--again, the Wired Telecommunications Carrier code--"does not match the greatest percentage of work identified in the original ceiling estimate as required for contracts requiring services and/or products from multiple industries." "Therefore, businesses that would have qualified as small under a more appropriate NAICS code had to compete with much larger businesses for the small business awards," the DOD IG continued. "As of the end of FY 2006, those small businesses lost out on the opportunity to bid on at least \$885 million of NETCENTS task orders." The DOD IG said program officials bundled the contract without justification, while the Air Force disputed the finding that the contract was bundled.

The DOD IG ITES-2S audit report, "Army Information Technology Enterprise Solutions-2 Services Contract" (D-2007-115, 8/9/2007), is available at: <http://www.dodig.mil/Audit/reports/FY07/07-115.pdf>. The NETCENTS audit report, "Air Force Network-Centric Solutions Contract" (D-2007-106, 6/29/2007), is available at: <http://www.dodig.mil/Audit/reports/FY07/07-106.pdf>.

LEGISLATIVE ACTION

Bill Number	Sponsor	Description	Action
H.R. 180	Lee	To prevent federal dollars from going to international companies that do business in Sudan	Passed by House 7/31/07, 418-1
H.R. 2722	Cummings	To restrict Coast Guard's reliance on private lead systems integrators and address other problems the service has encountered with Deepwater fleet modernization program	Passed by House 7/31/07, 426-0
H.R. 3206	Velazquez	To extend Small Business Administration programs through 12/15/07	Passed by House 7/30/07; passed by Senate 7/31/07
H.R. 3222	Murtha	To provide fiscal year 2008 appropriations for the Department of Defense	Passed by House 8/4/07, 395-13
H.R. 3284	Carney	To eliminate Transportation Security Administration's exemption from federal procurement laws	Introduced in House 8/1/07; referred to Homeland Security
H.R. 3319	Schakowsky	To provide a preference in the award of federal contracts to companies that keep most of their workers and research dollars in the United States	Introduced in House 8/2/07
H.R. 3383	Castle	To require DOD contractors to have	Introduced in House 8/3/07;

		internal ethics compliance programs	referred to Armed Services and Oversight & Government Reform
H.R. 3405	Green	To require persons to certify that they have not violated foreign corrupt practices statutes before being awarded federal contracts	Introduced in House 8/3/07; referred to Oversight & Government Reform
S. 1922	Kerry	To eliminate Transportation Security Administration's exemption from federal procurement laws	Introduced in Senate 8/1/07; referred to Commerce
S. 1932	Bayh	To amend the Small Business Act to increase SBIR and STTR program expenditures	Introduced in Senate 8/1/07; referred to Small Business
S. 1945	Durbin	To provide a preference in the award of federal contracts to companies that keep most of their workers and research dollars in the United States	Introduced in Senate 8/2/07; referred to Finance