Small Business Administration Update

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### Government Contracting

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<th>Prime Contracting</th>
<th>Business Development</th>
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<td><strong>23% of all federal government prime contracting dollars should go to small businesses. In addition:</strong></td>
<td><strong>8 (a) Program</strong> – Small business development support for socially and economically disadvantaged firms, including access to set-aside contracts. Special Provisions for Alaskan Native Firms, Native Hawaiian Organizations and Tribal Firms.</td>
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<td>- 5% Small disadvantaged&lt;br&gt;- 5% Women-owned&lt;br&gt;- 3% Service-disabled veterans&lt;br&gt;- 3% HUBZones&lt;br&gt;- Natural Resources</td>
<td><strong>Mentor Protégé program</strong> enhances the capability of 8(a) participants to compete more successfully for federal government contracts by encouraging private-sector relationships.</td>
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### Policy, Planning and Liaison

| HUBZone Program - Promotes job growth, capital investment, and economic development to historically underutilized business zones, referred to as HUBZones, by providing contracting assistance to small businesses located in these economically distressed communities. |
| Goaling - Negotiates with each federal agency to establish individual agency goals that, in the aggregate, constitute government-wide goals. |
| Resources: HQ Staff, Certification and Continuing Eligibility Team, as well as Field Staff (OFO) |

### Business Development

- **Resources:** HQ Staff, Certification and Continuing Eligibility Team, as well as Field Staff (OFO)

### HUBZone

- **HUBZone Program** - Promotes job growth, capital investment, and economic development to historically underutilized business zones, referred to as HUBZones, by providing contracting assistance to small businesses located in these economically distressed communities.

### Resources

- **Policy, Planning and Liaison:** Drafts relevant Government contracting rules, analyzes and responds to proposed statutory changes, and leads inter-agency coordination on small business contracting rules, policies and systems.
- **Goaling:** Negotiates with each federal agency to establish individual agency goals that, in the aggregate, constitute government-wide goals.
- **Size:** Establishes small business size standards for each industry. These size standards are used for all federal small business programs.

### Subcontracting

- **Federal Subcontracting goal is set at 36%.”

### Protests and Program Exams

- **Size, WOSB and SDVOSB Programs**

### Certifications of Competency (CoCs)

- Provides a “second chance” to SBs to establish their capability and competence to perform on a specific government contract.

### Goaling

- **Negotiates with each federal agency to establish individual agency goals that, in the aggregate, constitute government-wide goals.”

### Resources

- **HQ Staff, Certification and Continuing Eligibility Team, as well as Field Staff (OFO)”**

### 7(j) Management and Technical Assistance Program

- Strengthens the capabilities of eligible firms through management and technical assistance.
Federal Government FY 2015

- SB 23% Goal: 25.7462%
  - 3rd Consecutive year
- SDB 5% Goal: 10.0570%
  - Highest Ever
- WOSB 5% Goal: 5.0546%
  - First Time Ever Met
- SDVO 3% Goal: 3.9263%
  - Highest Ever
- HUBZone 3% Goal: 1.8230%

In the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount paid to the concern under the contract

In the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, paid to the concern under the contract

Similarly Situated Entities – Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted

Sealift, Inc., B–409001, Jan. 6, 2014
NDAA 2013 Proposed Rule

- 79 FR 77955 (Dec. 29, 2014)
- Comment period closed May 6, 2015

- Combined Supplies/Services – NAICS code will dictate applicable performance requirements

- Only work performed by the subcontractor will count – work that the subcontractor subcontracts will count toward the subcontract amount that cannot be exceeded
NDAA 2013 Proposed Rule

- Joint Venture – Any JV will be considered small as long as each member qualifies as small under size standard
  - but excessive JV between two firms can result in affiliation

- Rebuttable presumption of affiliation among family members, firms which derive 70% of revenue from another firm

- Recertification required where acquisition occurs after offer but prior to award
NDAA 2013 Proposed Rule

- LOS and NMR do not apply to small business set asides below $150,000

- CO must request waiver of the NMR prior to posting solicitation, and must notify potential offerors of applicable waivers of the NMR

- NMR applies to HUBZone Set Asides
(d) Waivers for the purchase of software. (1) SBA may grant an individual waiver for the procurement of a software item provided that the software being sought is an item that is of a type customarily used by the general public or by non–governmental entities for purposes other than governmental purposes, and the item:

(i) Has been sold, leased, or licensed to the general public, or has been offered for sale, lease, or license to the general public;

(ii) Is sold in substantial quantities in the commercial marketplace; and

(iii) Is offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.
(2) If the value of services provided related to the purchase of a supply item that meets the requirements of paragraph (a)(1) of this section exceed the value of the item itself, the procurement should be identified as a service procurement, even if the services are provided as part of the same license, lease, or sale terms. If a contracting officer cannot make a determination of the value of services being provided, SBA will assume that the value of the services is greater than the value of items or supplies, and will not grant a waiver.
NDAA 2013 Proposed Rule

(3) Subscription services, remote hosting of software, data, or other applications on servers or networks of a party other than the U.S. Government are considered by SBA to be services and not the procurement of a supply item. Therefore SBA will not grant waivers of the nonmanufacturer rule for these types of services.
Information Value Added Technology Reseller

- 81 FR 4436 (January 26, 2016)
- NAICS 541519, Footnote 18
- 150 employees
- At least 15% and not more than 50% value added services, as measured by the total contract price.
- Manufacture the products or supply the product of a small business, unless SBA has issued a waiver
- Less than 15%, classify under manufacturing
- More than 50%, classify under service
Mentor Protégé

- SBA has the authority to establish program for all small business concerns, “shall be identical” to 8(a) mentor protégé program, except to the extent necessary
  - 15 U.S.C. 657r

- SBA has the authority to review and approve small business mentor protégé programs of other agencies
  - Within one year of final regulations
  - Does not include DoD
Mentor Protégé Proposed Rule

- Proposed Rule 80 FR 6618 (February 5, 2015), comment period closed May 6, 2015

- JV must be in writing

- JV may not be populated (except with administrative personnel)
  - How do we know Protégé is performing required percentage of work?

- Should all JVs be separate legal entities for tracking purposes?

- HUBZone JV – consistent with other programs

- JV certifications and performance of work reports

- Application – Open Season?

- Mentors – for profit?

- How many proteges can a mentor? How many mentors can a protégé have?
Mentor Protégé Proposed Rule

- Protégé – small for primary industry?
  - Current 8(a) program – half size standard, no 8(a) contract, developmental stage

- SBA verifies small business or socioeconomic status

- Written agreement approved by SBA – identify assistance

- Lasts up to 3 years, with one 3 year extension

- Annual reports – SBA may not approve continuation
Mentor Protégé Proposed Rule

- Size of an approved JV may still be protested
- Change in primary industry classification – entity owned firm may not own another Participant that at the time of application or in the previous 2 years participated in the 8(a) program under same primary NAICS code
- Voluntary suspension – disaster, lapse in appropriation
- Benefits reporting by entity owned concerns
- Reverse Auctions – SBA rules apply (Rule of Two COC)
Proposed Rule 80 FR 60300 (10/06/15), Comment period closed 12/07/2015

Where the subcontracting goals pertain only to an individual subcontracting plan, the contractor may receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier pursuant to the subcontracting plans required under paragraph (c) of this section in an amount equal to the dollar value of work awarded to such small business concerns.

Implements Section 1614 of NDAA of 2014, 15 USC 637(d)(16)
Prime contractors must incorporate the subcontracting plan goals of their lower tier subcontractors in their individual subcontracting plans.

Lower tier subcontractors must have their own individual subcontracting plans if the subcontract is at or above the subcontracting plan threshold, and are required to meet their subcontracting plan goals.
The actual subcontracting dollars are only reported once for the same award to avoid double counting the dollars, notwithstanding the fact that a small business subcontract may be reported under more than one subcontracting plan.
Prime contractors may accept a subcontractor's electronic self-certification as to size, if the solicitation for the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size representations and certifications are accurate and complete. Electronic submission may include any method acceptable to the prime contractor including, but not limited to, size representations and certifications made in SAM (or any successor system).
WOSB Sole Source Authority

- Designated industries by NAICS code
- CO does not have reasonable expectation of receiving offers from 2 or more WOSBs or EDWOSBs
- Estimated price does not exceed $4 million ($6.5 million for manufacturing)
- Award can be made at fair and reasonable price
- 80 FR 55019 (September 14, 2015), effective date October 14, 2015; FAR Interim Final Rule effective December 31, 2015 (80 FR 81888)
Section 825 of NDAA of 2015

- SBA must conduct new study of industries where WOSBs are underrepresented by January 2016 – Study sent to Congress
  - 81 Fed. Reg. 11340 (Effective March 3, 2016)
  - 80 EDWOSB NAICS
  - 365 WOSB NAICS
  - 445 Total 6-digit NAICS

- www.sba.gov/wosb
Section 825 of NDAA of 2015

- WOSB Certification – by Federal agency, a State government, SBA, or national certifying entity approved by SBA
  - Advance Notice of Proposed Rulemaking
  - 80 FR 78984 (December 18, 2015)
  - Comment Period closed February 16, 2016
  - www.regulations.gov RIN 3245-AG75
Section 868 – SBA Scorecard
- 50% prime goals
- 50% subk goals, number of SBCs awarded contracts, number of SBCs awarded subks, other factors

870 – OSDBU – notice from SBC that solicitation unduly restricts the ability of SBCs

871 – SES – Responsible for meeting subcontracting goals
864 – Non-manufacturer rule does not apply to contracts where principal purpose is acquisition of services or construction. Only applies where principal purpose is the acquisition of supplies.

863 – Substantial bundling – notice must be published at least 7 days before solicitation

867 – Allows past performance of all team members (JV or subs) to be considered for bundled or consolidated contracts, or multiple award contracts above the substantial bundling threshold for the agency (DOD $8 million, $6 million NASA/GSA/DOE, $2.5 million or more for all other agencies).
NDAA 2016, P.L. 114–92, 11/25/15

- **866 – HUBZone** – Includes disaster areas, expands Base Closure Area, allows ownership by Native Hawaiian Organization

- **869 – Authorizes petitions for reconsideration of industry size standards to SBA’s Office of Hearings and Appeals**
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