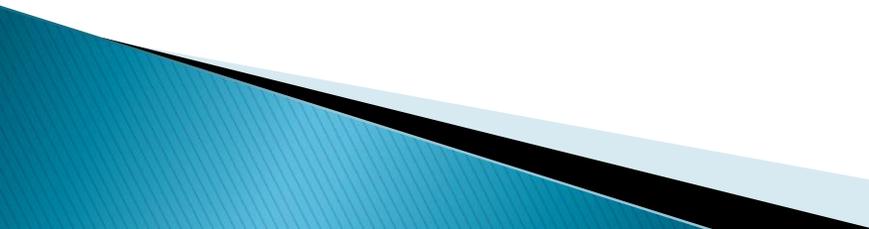


Recent Acquisition Developments

**Mid-Atlantic Regional Council
March 5, 2014**

Prioritizing Sources of Supplies and Services for Use by the Government (FAC 2005–72)

Effective January 30, 2014:

- Revises FAR 8.000, 8.002, 8.003, and 8.004 by eliminating outdated categories and distinguishing between government sources (e.g., federal supply schedules) and private-sector sources
 - Removes the term “Mandatory Federal Supply Schedules”
 - Renames “Optional Use Federal Supply Schedules” as “Federal Supply Schedules” and is moved to the new FAR 8.004 as a non-mandatory source.
 - Commercial sources and Federal Prison Industries are now non-mandatory sources
- 

New Policy Guidance – DoDI 5000.02

Department of Defense Instruction 5000.02 Interim Revision,
November 26, 2013

- Release of interim DoDI 5000.02, “Operation of the Defense Acquisition System” Goal is to help achieve greater spending efficiency and productivity.

Example: “The acquisition strategy must reflect the Program Manager’s understanding of the business environment; technical alternatives; small business strategy; costs, risks and risk mitigation approach; opportunities in the domestic and international markets; and the plan to support successful delivery of the capability at an affordable life-cycle price, on a realistic schedule.”

GAO Protests: Set-aside Requirements

CASE	Findings
Latvian Connection General Trading and Construction LLC B-408633 September 18, 2013	<ul style="list-style-type: none">• FAR Part 19 specifically addresses the applicability of small business set-aside requirements outside the U.S. Given the Small Business Act's silence on the matter, GAO could not say that FAR part 19 is inconsistent with the act, notwithstanding SBA's disagreement.• GAO concluded the agency acted reasonably in not setting aside for small business concerns, a procurement below the simplified acquisition threshold (SAT).• While the SBA acknowledges that the Act is silent as to their application outside the US, it nonetheless argues that these set-aside provisions cannot be limited to the US and outlying areas, as implemented in the FAR. CFR updates were issued at the end of December.

Take Away: IAW FAR 19, Requirements to set-aside acquisitions below the SAT for small business do not apply to contracts performed overseas. SBA disagrees.

GAO Protests: Set-aside Requirements

CASE	Findings
<p>Aljucar, Anvil-Incus & Company B-408936 January 2, 2014</p>	<ul style="list-style-type: none"><li data-bbox="869 299 1796 521">• GSA justified its evaluation criteria by backing it up with market research showing a lower success rate for joint ventures and an increase in risks associated with new joint venture projects. <p data-bbox="927 585 1796 899">The GAO stated that since the selection of evaluation criteria was primarily within the agency's discretion, it was not in a position to object to the use of particular evaluation criteria as long as they reasonably relate to the agency's needs.</p>

Take Away: Detailed market research plays an important part in justifying acquisition strategy.

GAO Protest SBA's 8(a) Program

CASE	Findings
<p>Alpa Technologies and Services, Inc. File: B-408762.2 Date: February 12, 2014</p>	<p>Protest that the Small Business Administration (SBA) improperly accepted a requirement into the 8(a) program without first determining whether doing so would have an adverse impact on existing small business concerns is denied where the procuring agency and the SBA reasonably found that the requirements qualified as new under SBA's regulations.</p>

Take Away: Conducting a FSS schedule buy of a previous 8(a) requirement does not remove the effort from the 8(a) program; SBA does not do adverse impact assessments of "new requirements".

CASE	Findings
<p>Agility Def. and Gov't Servs., Inc., et al. v. U.S. Dep't of Def., et al. Case: 13-10757 December 31, 2013</p>	<ul style="list-style-type: none">• Affiliates of indicted government contractors may be suspended from doing business with the government for the duration of the legal proceedings against the indicted contractor, even if charges have been filed only against the parent company.

Take Away: Contracting Officers must always confirm who is eligible to receive awards. Affiliates may be suspended under an action against a parent company even if proceedings against the affiliate haven't been filed.

FAR 52.232-40, Accelerated Payments to SB

On November 25, 2013, the Department of Defense, General Services Administration and NASA issued a Final Rule (published at 78 FR 70477), amending FAR 52.232-40, to add a new clause: “Providing Accelerated Payments to Small Business Subcontractors.” While the new clause is independent from the Prompt Payment Act, it similarly requires that a large business prime contractor receiving accelerated payments from the Government to accelerate payments to all small business subcontractors. The change became effective December 26, 2013, and will be inserted in all new solicitations and contracts after that date.

Also, FAR 52.244-6, Subcontracts for Commercial Items, is amended to add a requirement that FAR 52.232-40 be included by the contractor in all subcontracts.

IMPORTANT: Under the new rule, prime contractors cannot prevent small business subcontractors from discussing the status of their payment directly with the Contracting Officer.



Ovens, ranges, NMR

- ▶ Small Business Size Standards: Waiver of the Nonmanufacturer Rule, Federal Register announcement
- ▶ <http://www.gpo.gov/fdsys/pkg/FR-2013-12-19/pdf/2013-29873.pdf>

Notice of Final Action: Granting Class Waiver of the Nonmanufacturer Rule for Commercial-Type Ovens, Ranges, and Gas ranges as listed under NAICS code 333318 (Other Commercial and Service Industry Machinery Manufacturing).

2014 NDAA – Highlight

<http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT86280/pdf/CPRT-113HPRT86280.pdf>

Industrial Base Matters: the NDAA includes a new title in the bill to protect and secure defense industrial base capacity and security. **Included are provisions to assist small businesses and to strengthen the Procurement Technical Assistance Cooperative Agreement Program.**

The title also includes provisions to increase transparency in reporting small business participation and strengthens the requirements for small business subcontracting plans, reporting and goals.

Size Appeal – Patriot Construction

- ▶ ***Size Appeal of Patriot Construction, Inc., SBA No. SIZ-5439 (2013)***: The SBA Office of Hearings & Appeals does **not** consider the mentor/protégé program to be a free pass from affiliation. Be careful to avoid a finding of affiliation based on things that would independently constitute affiliation.

Award to the mentor of a mentor/protégé team was protested by competitor on the basis that the mentor and protégé were affiliated and thus not small. The SBA Area Office found ties between the mentor and the protégé, but did not find they were affiliated due to the mentor/protégé relationship. In past decisions, the mentor/protégé relationship disallowed a finding of affiliation. The competitor appealed, and the SBA OHA found that SBA regulations do not set forth a complete exception from affiliation for 8(a) mentors and protégés.

OHA remanded to the SBA Area Office to consider “whether the extensive sharing of employees between the two concerns, outside of the contracts the approved joint ventures performed, was **beyond the scope of assistance provided under the mentor/protégé agreement**, and thus constituted a basis for finding affiliation between the [mentor and protégé] for other reasons.”

SB Do's and Don'ts

- ▶ If you could tell SBs one thing that they either should do or should not do, what would that be?
 - ▶ Will compile your feedback and share the results with the council.
 - Please indicate whether you are responding as a federal agency, SB resource partner, or SBLO.
- 