

Legislative Update

December 2013

Topics

- FAR Final Rule – Documenting Past Performance, effective Sept 3
- SSR Class Deviation effective Sept 9
- GAO Decision: Brand-name justification
- SBA OHA Decision: Size recertification on TO competitions

Documenting Contractor Performance

(FAR Case 2012-009)

Final Rule, **effective Sept 3, 2013**

The final rule amended the FAR to provide Governmentwide **standardized past performance evaluation factors** and performance rating categories and require that past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS), the single Governmentwide past performance reporting system.

Evaluation factors for each assessment shall include, at a minimum, the following:

- (i) Technical (quality of product or service.)
- (ii) Cost control (not applicable for firm-fixed-price or fixed-price with economic price adjustment arrangements).
- (iii) Schedule/Timeliness.
- (iv) Management or Business Relations.
- (v) Small Business Subcontracting** (as applicable, see Table 42-2).
- (vi) Other

DPAP Class Deviation, SSRs

Effective Sept 9, 2013; class deviation on summary subcontract report (SSR) submissions. When using FAR 52.219-9, DFARS 252.219-7003, or alternates, contracting officers must use the new language.

The FAR 52.219-9 deviation:

Reduces from biannual to annual the frequency of SSR submittals; Eliminates the requirement for multiple SSRs for construction and related maintenance and repair contracts, so that only one consolidated report encompassing all contracts is required.

The DFARS 252.219-7003 deviation:

Changes the entity to which the contractor submits the SSR in eSRS from the DoD component to DoD; **Removes the requirement for the year-end supplementary report for SDB** and the report for SDB participation.

GAO, B-408196, Brand Name Justification

B-408196, Desktop Alert, Inc., July 22, 2013

Protests the terms of RFQ under the FSS procedures of Federal Acquisition Regulation (FAR) subpart 8.4 for emergency mass notification software, products and services. The protester asserts that the solicitation, which limits the competition to brand name items, is unduly restrictive of competition.

We sustain the protest.

“ The agency’s limited source justification fails to comply with requirements of FAR § 8.405-6, and is therefore unreasonable...**did not adequately define its requirements or specify any special features**...that make this brand name essential to the agency’s needs...**did not demonstrate with adequate market research or otherwise that it considered whether other companies’ similar products**, or products lacking a particular feature, do not meet, or cannot be modified to meet, the agency’s needs.”

SBA No. SIZ-5456, Metters Industries Inc.

Recertifying size in TO competitions.

In a task order competition, Army used a discretionary set-aside, clearly stated they wanted to ensure award went to a SB and that offerors had to confirm size at time of TO proposal. Metters had become large so it didn't submit a size confirmation with its proposal, was considered ineligible for award and protested to the SBA.

SBA OHA Comments: "I agree with the SBA area offices that the Task Order Request for Quotations (TORFQ) is properly understood as requiring recertification at the task order level. The TORFQ instructed each offeror to specify its size status in its task order proposal, and to verify whether its size "as of the date of your task order quotation submission" is the "same as" the offeror's underlying GSA Schedule. ...read in its entirety, **the TORFQ appears to be asking each offeror to verify, in writing, that it was a small business on its GSA Schedule contract, and that the offeror was still a small business at time of task order proposal submission and task order award. Such a statement is equivalent in substance to a certification...**