

# Legislative Update

June 2013

# Topics

- GAO Decision: 8(a) Set-asides
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# GAO decision, 8(a) set-aside

B-407020, Blue Ridge Limousine and Tour Service, Inc.

Protest that the small business administration (SBA) improperly accepted army shuttle bus services requirement into the 8(a) program without first determining whether acceptance would adversely impact the protester--the incumbent 8(a) contractor who had graduated from the 8(a) program--is denied where the **SBA determined that the requirement was a follow-on to the previous 8(a) contract and that therefore no adverse impact analysis was required.**

# NAICS Codes and SAM Profiles

GAO Decision B-299817, S4, Inc., Aug 23, 2007

Protest is denied where agency properly proceeded with award notwithstanding absence of a specific NAICS code from awardee's entries in ORCA because **other information posted there confirmed that awardee represented itself to be small under applicable size standard.**

# Ostensible Subcontracting

SBA No. SIZ-5416, J. W. Mills Management, LLC

The ostensible subcontractor rule “asks, in essence, whether a large subcontractor is performing or managing the contract in lieu of a small business [prime] contractor.” *Here, the record does not support the conclusion that BCI is performing or managing the instant contract...*

**Appellant alone will perform the “primary and vital” requirements of the contract... Appellant alone will manage the contract**, retaining control over decision-making. BCI will have a limited and defined role in the contract, furnishing support services of an administrative nature, and will not participate in contract management. There is no indication that BCI would provide Appellant with assistance essential to performing the contract. Nor is BCI the incumbent contractor, an issue which must be considered under 13 C.F.R. § 121.103(h)(4).

# Ostensible Subcontracting, cont.

SBA No. SIZ-5466. Shoreline Services, Inc.

**A prime contractor does not perform the primary and vital requirements merely by supervising subcontractors in their performance of work.**

...the full RFP demonstrates that the collection and transportation of refuse and recyclable materials is the procurement's primary purpose. **It is undisputed that Waste Management, not Six Sigma, is performing all such aspects of the contract. Six Sigma, on the other hand, is merely overseeing Waste Management's performance of these tasks.** Such an arrangement is in clear violation of the ostensible subcontractor rule. ...Thus, because Waste Management is performing the contract's primary and vital requirements, Six Sigma is in violation of the ostensible subcontractor rule and is therefore affiliated with Waste Management for purposes of this procurement.

# NAICS Codes and FSS Orders

## SBA No. NAICS-5470, Global Dynamics LLC

Under 13 C.F.R. § 121.402(b), a procuring agency ordinarily must designate the NAICS code which best describes the principal purpose of the product or service being acquired in light of the industry descriptions, the description in the solicitation, and the relative weight of each element in the solicitation. However, **SBA regulations recognize an exception to this general rule for orders placed under the FSS and other long-term contracts.** For such procurements, the CO “must assign a NAICS code and size standard to each order under a long term-contract,” and “[t]he **NAICS code and size standard assigned to an order must correspond to a NAICS code and size standard assigned to the underlying long-term contract.**”

In a 2012 NAICS decision, the contracting officer couldn't find any NAICS code that matched the proposed work on the FSS. In that case, the KO chose a NAICS code that had the same size standard as the appropriate NAICS Code. (SIZ-5411)

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Q&A