

Legislative Update & NAVSUP SB Program

March 2014

Set-asides are Competitive

A DOL sources sought notice encouraged SB firms to provide a capabilities statement. Procurement was not set-aside. Five responses were received, four of which were from SB. DOL determined two SB's and one LB were potential sources. DOL converted the solicitation to issued 100% set-aside. **A large business protested saying that "small business set asides are not a form of competition.**

The **Court of Federal Claims** wrote: Competition in Contracting Act defines '**competitive procedures,**' to include procurements that **are set-aside to promote small businesses;** the common use of 'competition' and 'competitive' also support that small business set-asides are 'competitive,' **reiterated there must be a minimum of two** potential bidders before a procurement can be set aside for small businesses.

Subcontracting Goals in RFP

Federal Claims Court decision (*See FirstLine Transp. Sec., Inc., v. United States, 12-601C, 2012 WL 5939228 (Fed. Cl. Nov. 19, 2012)*) **supported a TSA's decision to establish a 40% (of contract price) small business subcontracting goal in a RFP.**

A key element of the court supporting the TSA was how they handled questions. When asked whether proposals that don't meet the 40% will be disqualified, they answered, **"if the successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer ... the offeror will be ineligible for award."**

The court commented that TSA should have done **'more robust' MR** on which to base the goals and stated **preference for goals as a percentage of subcontracting dollars** but stopped short of challenging the KO's ability to base them on total contract price.

GAO & FSS Set-asides

B-407367, Swank Healthcare, December 12, 2012

<http://www.gao.gov/products/B-407367>

Swank Healthcare, of St. Louis, Missouri, protests the terms of request for quotations (RFQ) No. VA777-12-Q-0257, issued by the Department of Veterans Affairs (VA) for commercial off-the-shelf online courses. Swank, a large business concern, **complains that the RFQ should not have been set aside for small businesses.** GAO denied the protest.

Swank complained that the VA **did not verify each SB's ability to meet all of the requirements** of the solicitation prior to making a set-aside decision. *(continued on next page)*

GAO & FSS Set-asides

“Agencies are not required to make actual determinations of responsibility or decisions tantamount to determinations of responsibility in determining whether to set aside a procurement.”

An interesting footnote on the second page - GAO hasn't weighed in on discretionary set-asides just yet. "Although not argued by the VA, it is not clear that a complaint objecting to an **agency's decision to set aside a FSS** procurement for small business concerns states a valid basis for protest. As we otherwise find the protest has no merit, **we do not address this argument**".

SBA No. NAICS-5422, Nov 27

Nov 5, 2012: Solicitation posted by Navy under NAICS code 711510, Independent Artists, Writers, and Performers.

Nov 19, 2012: SBA OHA received an email NAICS code appeal. The regulations require that an appeal must be filed within **10 calendar days** after issuance of the solicitation. **13 C.F.R. § 134.304(b)**.

However, **13 C.F.R. § 121.1103(b)(1)** states that the deadline for a NAICS code appeal is **10 business days**, rather than calendar days. SBA amended 13 C.F.R. § 121.1103(b)(1) in Feb 2011 to change calendar days to business days, but included no discussion of this change in the preamble. 76 Fed. Reg. 5680, 5681 (Feb. 2, 2011).

Accordingly, **OHA has ruled that the switch to business days in 13 C.F.R. § 121.1103(b)(1) was inadvertent**, not the result of any conscious intent by the agency to extend the deadline for NAICS code appeals. The appeal was dismissed.

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.**

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.**

GAO Protest SBA's 8(a) Program

CASE

Alpa Technologies and
Services, Inc.
File: B-408762.2
Date: February 12, 2014

Findings

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.

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".

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">• 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>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 that is properly documented plays an important part in justifying acquisition strategy.

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.”

NMR Training on SBA Site

The screenshot displays the SBA.gov website interface. At the top left is the SBA.GOV logo with the tagline "U.S. Small Business Administration". To the right are social media icons for Facebook, Twitter, YouTube, and LinkedIn, followed by a search bar labeled "Search SBA.Gov" and a "SEARCH" button. Below the header is a navigation menu with tabs for "Starting & Managing", "Loans & Grants", "Contracting", "Learning Center", "Local Assistance", and "SBA Direct". The "Learning Center" tab is active, and the breadcrumb trail reads "Home > Learning Center > Training > Non-Manufacturer Rule Primer".

The main content area features a dark blue banner for the "Small Business Learning Center". Below this, the "Non-Manufacturer Rule Primer" course is highlighted with a laptop icon. The course description states: "This course is designed to provide an overview of the Non-Manufacturer Rule, describing what it is, why it's important and how it's applied. See the Government Contracting Classroom for more information." The duration is listed as "00:18:01". There are three links: "Workbook", "Text based accessible version", and "SBA Keyboard Shortcuts". A prominent blue button labeled "BEGIN COURSE" is visible.

Under "System Requirements:", it lists "Acrobat Reader, Adobe Flash Player" and notes that "Classes will not play in iOS devices due to Flash limitations".

To the right of the course information is a thumbnail image of the course material, titled "NMR – Primer" and "Non-Manufacturer Rule: A Guide for Contracting Officers". It features the SBA logo and the text "Office of Government Contracting and Business Development June 2012".

NMR Rule at SBA Small Business Learning Center:
www.sba.gov/sba-learning-center/training/363981

NAVSUP Office of Small Business Programs



http://www.navsup.navy.mil/navsup/business_opps



- The NAVSUP and Navy Supply Corps team share one mission-- to **deliver sustained global logistics and Quality-of-Life Support to the Navy and Joint warfighter.**
- NAVSUP/Navy Supply Corps' team of more than 25,000 civilian and military personnel oversee a diverse portfolio. The team forms a vast network of professionals who deliver unparalleled products and services to customers in the fleet and across the world.

NAVSUP WSS

The WSS provides Navy, Marine Corps, Joint and Allied Forces program and **supply support for the weapons systems**.

What we buy: Valves, couplers, shafts, cable assemblies, submarine components, hull connectors, torpedo tubes, antennas, periscopes, critical piping systems; Jet Engine components, Airframe support both fixed and rotary wing, Avionics, Ground Support Equipment, and Aircraft Launch and Recovery Equipment.

Top NAICS: 33, 32, 31

NAVSUP Fleet Logistics Centers

- The FLCs provide **supply support services to Fleet units**. In addition to the sites below, FLCs are also located in Sigonella (Sicily) and Yokosuka (Japan).

What we buy: Engineering services; industrial equipment; administrative and technical services, professional services, educational services, products, repair services and various manufactured items.

FLC Jacksonville **Top NAICS:** 54, 56, 33, 31, 51

FLC Norfolk & Philadelphia Det **Top NAICS:** 54, 33, 51, 61, 56

FLC Pearl Harbor **Top NAICS:** 56, 54, 33, 51, 72, 53

FLC Puget Sound **Top NAICS:** 33, 54, 56, 81, 32

FLC San Diego **Top NAICS:** 54, 33, 61, 56, 51

Naval Medical Logistics Command

NMLC specializes in the **acquisition of health care services, supplies, and, equipment**. We concentrate on personal service contracts with direct health care providers.

What we buy: Products and services in support of Navy Medicine (e.g., health care services, medical equipment, supplies for the fleet and shore-based Navy medical treatment facilities, clinical support services for R&D, and equipment/laboratory supplies in support of the DoD Drug Testing Program). HQ at Fort Detrick, Maryland.

Top NAICS: 62, 54, 33, 32, 81

Naval Medical Center San Diego: ***Top NAICS:*** 33, 54, 52, 62, 51

Naval Medical Center Portsmouth: ***Top NAICS:*** 33, 81, 32, 54, 51

Naval Oceanographic Office

NAVOCEANO provides **oceanographic products and services** to all elements of the Department of Defense. NAVOCEANO is located at John C. Stennis Space Center in south Mississippi.

What we buy: Oceanographic products and services for the Department of Defense.

Top NAICS: 33, 54, 51, 61, 81

Navy Exchange Program

NEXCOM oversees six primary business programs: Navy Exchange (NEX) Retail Stores and Services; Navy Lodge Program; Uniform Program Management Office (UPMO); Navy Clothing Textile and Research Facility (NCTRF); Ship's Stores Program; and Telecommunications Program.

What we buy: NEXCOM buys services and merchandise sold to customers, and procures supplies and services to support overseas Navy Exchange retail stores; Navy lodges; uniforms; Clothing Textile & Research Facility; & ship's stores.

Note: NEXCOM is not subject to the FAR.

Weapons Systems Support

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Naval Oceanographic Office

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Naval War College

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What we buy: Products and services for
the college.
Top NAICS: 61, 54, 51, 33, 81

Fleet Logistics Centers

FLC Jacksonville

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FLC Pearl Harbor

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FLC Puget Sound

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FLC San Diego

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## Navy Exchange Service Command

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# Key focus areas

- Strategic Sourcing Vehicles
- Data integrity
- Communication within the SYSCOM and agency
- Communication with industry
- Online information and capabilities
  - Small Business Review App



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For more information and to review the FY14-15-16 procurement forecast,  
visit the NAVSUP Business Opportunities Page:

[http://www.navsup.navy.mil/navsup/business\\_opps](http://www.navsup.navy.mil/navsup/business_opps)