

DOD, Others Seek To Clarify Small-Biz Contracting Rules

By Ian Thoms

Share us on:

Law360, New York (August 09, 2012, 5:10 PM ET) -- The U.S. Department of Defense (/agencies/u-s-department-of-defense), U.S. General Services Administration (/agencies/general-services-administration) and NASA (/agencies/national-aeronautics-and-space-administration) want to amend federal acquisition rules to require contracting officers to set aside research and development contracts for small businesses capable of delivering "the best scientific and technological approaches," they said Thursday.


In a notice to the Federal Register, the agencies proposed to amend the Federal Acquisition Regulation (/agencies/federal-acquisition-regulatory-council) to clarify that contracting officers should set aside contracts when market research shows there are small businesses that can deliver the required services. Interested parties have 60 days to comment on the proposal.


The change was prompted by a request from the U.S. Small Business Administration (/agencies/small-business-administration), according to the agencies. The SBA had taken issue with a section of the Federal Acquisition Regulation, saying it had led to some confusion.


The regulation reads, "In making R&D small-business set-asides, there must be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance and schedules." The SBA said the sentence had been interpreted as a unique condition that must be met before a contract can be awarded.


The amended provision would make it clear that the evaluation of whether there are small businesses capable of delivering on a contract comes before a set-aside is issued, according to the notice in the Federal Register.

"This clarification is intended to remove the potential barrier for small business previously noted by the SBA, as the requirement to conduct market research in advance of a small-business set-aside is not a new or additional requirement," wrote Laura Auletta, director of the Office of Governmentwide Acquisition Policy.



 (/articles/368393/print?section=governmentcontracts)


 (/articles/368393/share?section=governmentcontracts)


 (/about/rights_and_reprints?


 article_id=368393) (/about/editorial_contacts)

Documents


 (https://s3.amazonaws.com/publicinspection.federalregister.gov/2019628.pdf) Federal Register (https://s3.amazonaws.com/publicinspection.federalregister.gov/2019628.pdf)

Related

Sections

Government Contracts (/governmentcontracts)

Public Policy (/publicpolicy)

Government Agencies

Federal Acquisition Regulatory Council (/agencies/federal-acquisition-regulatory-council)

General Services Administration (/agencies/general-services-administration)

National Aeronautics and Space Administration (/agencies/national-aeronautics-and-space-administration)

Small Business Administration (/agencies/small-business-administration)

U.S. Department of Defense (/agencies/u-s-department-of-defense)

U.S. House of Representatives (/agencies/u-s-house-of-representatives)

Articles

DOD Should Weigh Reforms For Small Contractors: Panel (/articles/306568/dod-should-weigh-reforms-for-small-contractors-panel?related_articles=1)

SBA Procurement Goals Get Footing In Larger Contracts (/articles/282741/sba-procurement-goals-get-footing-in-larger-contracts?related_articles=1)

Lawmakers Press SBA On Set-Aside Loopholes, Oversight (/articles/260127/lawmakers-press-sba-on-set-aside-loopholes-oversight?related_articles=1)

Siga Appeals \$2.8B Drug-Contract Disqualification (/articles/207717/siga-appeals-2-8b-drug-contract-disqualification)

Got an idea for a story?

Email editor@law360.com (mailto:editor@law360.com).

Got the inside scoop but prefer to stay out of the spotlight?

Email offtherecord@law360.com (mailto:offtherecord@law360.com).

Government Contracts

Federal Law Preempts DHL's Calif. False Claims Suit: Judge

(/governmentcontracts/articles/368637/federal-law-preempts-dhl-s-calif-false-claims-suit-judge?article_more_news=1)

A California state judge on Thursday tossed a suit accusing DHL Express USA Inc. of violating the state's False Claims Act by overcharging government agencies for package deliveries and said the claims are preempted by federal laws.

Judge Approves SBA Takeover Of Venture Capital Firm

(/governmentcontracts/articles/368288/judge-approves-sba-takeover-of-venture-capital-firm?article_more_news=1)

A California federal judge on Wednesday placed technology venture capital firm Novus Ventures II into receivership after it failed to pay back nearly \$40 million in U.S. Small Business Administration loans.

Fed. Circ. Mulls Reviving Northrop's Software Contract Case

(/governmentcontracts/articles/362492/fed-circ-mulls-reviving-northrop-s-software-contract-case?article_more_news=1)

The Federal Circuit indicated Thursday that it would revive Northrop Grumman Computing Systems Inc.'s suit alleging the government breached a software contract by not securing enough funding, saying contractors don't need to disclose pre-performance financing information.

Fed. Circ. Backs NetStar Win In ICE Bid Protest Against Aion

(/governmentcontracts/articles/366477/fed-circ-backs-netstar-win-in-ice-bid-protest-against-aion)

Read More » (/publicpolicy/articles/368639/fhfa-axed-clean-energy-grants-without-due-notice-judge?article_more_news=1)

A California federal judge on Thursday held that the Federal Housing Finance Agency failed to comply with the Administrative Procedure Act's notice and comment rules when it decided to end a program that financed renewable energy retrofits for houses.

NAIC's Force-Placed Market Inquiry Will Focus On Rates

(/publicpolicy/articles/355241/naic-s-force-placed-market-inquiry-will-focus-on-rates?article_more_news=1)

National Association of Insurance Commissioners President Kevin McCarty told reporters Thursday that state insurance regulators will scrutinize controversial business practices in the force-placed homeowners insurance industry, directing their focus on whether rates for these policies are justified.

House GOP Calls For Probe Into Funding Of Health Reform Law

(/publicpolicy/articles/368604/house-gop-

related_articles=1)

US Beats Suit Over Small Business Tent Contract (/articles/257997/us-beats-suit-over-small-business-tent-contract?related_articles=1)

The DOD has been pushed recently to make its procurement process friendlier to small businesses. Earlier this year, government contracting experts told the U.S. House of Representatives Armed Services Committee (/agencies/u-s-house-of-representatives) that without reforms, small companies would have an increasingly difficult time doing business with the Pentagon as its budget shrinks.

Joel Johnson, director of defense consulting firm Teal Group Corp., and Allan Burman, president of the contractor Jefferson Solutions, told the committee that the DOD would benefit by creating new incentives for small-business contracts.

Johnson and Burman testified before the committee as part of an ongoing set of hearings called "Doing Business with the DOD." It is the second hearing this year that has touched on contracting obstacles for small businesses.

According to Johnson, shrinking research and development budgets will cause major contractors to stop subcontracting with smaller counterparts, likely forcing small businesses to make painful workplace reductions.

"Smaller companies currently not doing defense work will be skeptical that this is an area to pursue, particularly if the civil economy is beginning to show signs of life," Johnson said. "This makes it all the more important that the government is not seen by potential innovators in the private sector as being an unattractive customer, partner or investor."

Johnson and Burman said it was crucial that the DOD reduce regulatory obstacles and improve incentives under the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement and the International Traffic In Arms Regulations.

--Additional reporting by Derek Hawkins. Editing by Elizabeth Bowen.

calls-for-probe-into-funding-of-health-reform-law?article_more_news=1)

Republican heads of the House Ways and Means Committee asked the Government Accountability Office on Thursday to respond to claims that Medicare and Medicaid funds have been used to implement President Barack Obama's health care law.