



Weekly Report for December 23, 2016

GOVERNMENT CONTRACTS

Payment of Subcontractors

The Department of Defense (“DOD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”), have issued a final rule amending the Federal Acquisition Regulation (“FAR”) to implement a section of the Small Business Jobs Act of 2010. This statute requires contractors to notify the contracting officer, in writing, if the contractor pays a reduced price to a small business subcontractor or if the contractor's payment to a small business subcontractor is more than 90 days past due, [81 Fed. Reg. 93481](#). This final rule is effective January 19, 2017.

Privacy Training

DOD, GSA, and NASA have issued a final rule amending the FAR to require that contractors, whose employees have access to a system of records or handle personally identifiable information, complete privacy training, [81 Fed. Reg. 93476](#). This final rule is effective January 19, 2017.

DEPARTMENT OF DEFENSE

Competition for Religious-Related Services Contracts

DOD is proposing to amend the Defense Federal Acquisition Regulation Supplement (“DFARS”) to implement a section of the National Defense Authorization Act that provides the competition requirements for religious-related services contracts on a U.S. military installation, [81 Fed. Reg. 93875](#). Comments on the proposed rule are due on, or before, February 21, 2017.

Independent Research and Development Expenses

DOD is proposing to amend the DFARS to ensure that substantial future independent research and development expenses, as a means to reduce evaluated bid prices in competitive source selections, are evaluated in a uniform way during competitive source selections, [81 Fed. Reg. 93878](#). Comments on the proposed rule are due on, or before, February 2, 2017.

Contract Financing

DOD has issued a final rule amending the DFARS by providing that contracting officers are not required to further justify a decision to provide customary contract financing, other than loan guarantees and advance payments identified in FAR part 32, for certain fixed-price contracts, [81 Fed. Reg. 93841](#). The final rule became effective December 22, 2016.

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards for Manufacturing - Correction

On January 26, 2016, SBA published a final rule implementing changes to the size standards for a number of industries in NAICS Sectors 31-33, Manufacturing ([81 Fed. Reg. 4469](#)). As discussed in the preamble of the rule, SBA intended to amend paragraphs (a) and (b) of Footnote 5 to the table of size standards relating to NAICS 326211, Tire Manufacturing (except Retreading), by replacing the former Census classification codes 30111 and 30112 with the new Census Product Classification Codes 3262111 and 3262113. However, the amended text inadvertently omitted the new Census Product Classification code 3262111. This action corrects that omission, but does not affect the 1,500-employee small business size standard for NAICS 326211, [RIN: 324-AG50](#).

OTHER NEWS

“In 2017, Expect Fierce Competition For Defense IT Contracts.” *NextGov*, December 21, 2016. Retrieved from <http://www.nextgov.com>.

According to research from big data and analytics firm Govini, \$210 billion in DOD contracts are set to expire during the 2017 calendar year, and no market will be more competitive than that of IT services. Govini projects an average of seven bids per expiring contract in 2017, meaning increased competition among vendors competing for an estimated \$9 billion in expiring contracts, and an untold billions of more dollars in new ones. Govini’s analysis takes into account President-elect Trump’s position on government contracting in general and states “[e]xpiring contracts will be seen as low-hanging fruit by the incoming Trump administration looking to begin implementing its agenda immediately. Combined with the backdrop of leveraging purchasing power, procurement reform and eliminating fraud, waste and abuse, the defense industrial base faces much uncertainty in 2017.”

“SBA and GSA, OFPP Not Seeing Eye-to-Eye on ‘Rule of Two’ Application.”

Federal News Radio, December 19, 2016. Retrieved from <http://federalnewsradio.com>.

The Small Business Administration (“SBA”) is expanding the Supreme Court’s June 16 *Kingdomware* ruling, applying the “rule of two” to all task and delivery orders under the Simplified Acquisition Threshold (“SAT”) if the request for proposals comes under the General Services Administration’s (“GSA”) Schedule. The “rule of two” states if an agency can find two or more qualified small businesses during market research of a contract under the SAT, it must set aside the solicitation. While John Shoraka, SBA’s Associate Administrator for Government Contracting and Business Development, has

argued “the language around 15J [of the Small Business Act] where contracts are defined as order and should follow the same procedures as contract in respect to the rule of two and set-asides,” industry experts, the GSA, and the Office of Federal Procurement Policy (“OFPP”) aren’t yet on board with the SBA. Christoph Mlinarchik, a government contracts expert and owner of Christoph LLC said SBA’s ruling and recent memo are not in line with what Congress intended in the Small Business Jobs Act of 2010. In an email to Federal News Radio, Mlinarchik said “Congress established that at the ordering level for multiple-award contracts, agencies have discretion to set aside orders and the ‘rule of two’ is not mandatory.” The next question is whether the GSA and OFPP agree with SBA and move to change the Federal Acquisition Regulation, or push back.