



Weekly Report for September 30, 2016

GOVERNMENT CONTRACTS

Amendments to Department of Defense (“DOD”) Mentor-Protégé Program

DOD has issued a proposed rule which will amend the DFARS to implement Section 861 of the NDAA 2016, which provides amendments to the DOD Mentor-Protégé Program. The proposed amendments will require contractors who participate in the program as mentors to report all technical or management assistance provided; any new awards of subcontracts to the protégé firm, including the value of such subcontracts; any extensions, increases in the scope of work, or additional, unreported payments to the protégé firm; the amount of any progress payments or advance payments made to the protégé firm for performance under any subcontract made under the program; any loans made to the protégé firm; all federal contracts awarded to the mentor and protégé firms as a joint venture; any assistance the mentor firm obtained for the protégé firm from small business development centers established under 15 U.S.C. § 648, entities providing procurement technical assistance under 10 U.S.C. ch. 142, or Historically Black Colleges or Universities or Minority Institutions of Higher Education; whether the terms of the mentor-protégé agreement have changed; and a narrative describing the success assistance provided under the program has had in addressing the protégé firm’s developmental needs, the impact on DOD contracts, and addressing any problems encountered. These reporting requirements apply retroactively to mentor-protégé agreements in effect on November 25, 2015, the date of enactment of the NDAA 2016.

In addition, Section 861: (1) adds new eligibility criteria; (2) limits the number of mentor-protégé agreements to which a protégé firm may be a party; (3) limits the period of time during which a protégé firm may participate in mentor-protégé agreements under the program; (4) adds new elements to mentor-protégé agreements addressing the benefits of the agreement to DOD and goals for additional awards for which the protégé firm can compete outside the program; (5) removes business development assistance using mentor firm personnel and cash in exchange for an ownership interest in the protégé firm from the types of assistance that a mentor firm may provide to a protégé firm; (6) prohibits reimbursement of any fee assessed by the mentor firm for certain services provided to the protégé firm while participating in a joint venture with the protégé firm; (7) revises the definitions of the terms “small business concern” and “disadvantaged

small business concern;" (8) adds definitions for "severely disabled individual" and "affiliated;" and (9) extends the Program for three years, [81 Fed. Reg. 65610](#). Comments on this proposed rule are due by November 22, 2016.

Temporary Extension of Test Program for Comprehensive Small Business Subcontracting Plans

DOD has issued a proposed rule to revise the DFARS to implement Section 821 of the NDAA 2015 and Section 872 of the NDAA 2016, both of which revise the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans ("Test Program.")

Section 821 of the NDAA 2015 provides, for contractors participating in the Test Program, to report, on a semiannual basis, as follows: (1) the amount of first-tier subcontract dollars awarded; (2) the total number of subcontracts active under the Test Program that would have otherwise required a subcontracting plan under 15 U.S.C. § 637(d); (3) costs incurred in negotiating, complying with, and reporting on comprehensive subcontracting plans; and (4) costs avoided by adoption of a comprehensive subcontracting plan. In addition, Section 821: (1) repeals section 402 of Public Law 101-574, which suspended liquidated damages under comprehensive small business subcontracting plans; (2) requires consideration, as part of the past performance evaluation of an offeror, of any failure to make a good faith effort to comply with its comprehensive subcontracting plan; (3) extends the Test Program through December 31, 2017; (4) increases the threshold for participation in the Test Program from \$5,000,000 to \$100,000,000; and (5) prohibits negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year.

Section 872 of the NDAA 2016 removes the prohibition on negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year, [81 Fed. Reg. 65606](#). Comments on the proposed rule are due by November 22, 2016.

SMALL BUSINESS ADMINISTRATION

Small Business Timber Set-Aside Program

The SBA is seeking comments on a proposed amendment to its regulations governing the small business timber set-aside program so that appraisals on small business set-aside sales can be made to the nearest small business mill. Currently, appraisals in small business set-aside timber sales take into account the haul costs to the nearest mill regardless of that mill's size. Since set-aside timber sales require the use of small business mills, SBA proposes that the appraisal on set-aside timber sales be made to the nearest small business mill in order to accurately reflect the estimated cost to an eligible bidder. SBA is also requesting comment on a possible policy alternative that would use a weighted approach to appraising, [81 Fed. Reg. 66199](#). Comments are due by November 28, 2016.

DEPARTMENT OF VETERANS AFFAIRS

Prohibition on Use of Any Cost-Plus System of Contracting for Military Construction and Military Family Housing Projects

DOD issued a final rule amending the DFARS to implement section 2801 of the NDAA 2012 that amended Title 10 of the United States Code by prohibiting any form of cost-plus contracting for military construction projects or military family housing projects, [81 Fed. Reg. 65563](#). This final rule became effective on September 23, 2016.

Federal Civil Penalties Adjustment Act Amendments

The VA issued a final rule adopting, without changes, its interim final rule, which increased maximum civil monetary penalties from \$10,000 to \$21,563 for false loan guaranty certifications and from \$5,500 to \$10,781 for fraudulent claims or fraudulent statements in any VA program [81 Fed. Reg. 65551](#). This final rule became effective on September 23, 2016.

LABOR AND EMPLOYMENT

Extension of Comment Period for Proposed Revision of Annual Information Return/Reports

The DOL has extended the comment period on the Notice of Proposed Revision of Annual Information Return/Reports, which was originally published on July 21, 2016, from October 4, 2016 to December 5, 2016, [81 Fed. Reg. 65594](#).