



Weekly Report for November 18, 2016

DEPARTMENT OF DEFENSE, GENERAL SERVICES ADMINISTRATION, AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Clarification of Requirement for Justifications for 8(a) Sole Source Contracts

The Department of Defense (“DOD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”) have issued a proposed rule to amend the Federal Acquisition Regulation to clarify the guidance for sole-source 8(a) contract awards exceeding \$22 million. This proposed rule responds to the recommendations made by the Government Accountability Office (“GAO”) in its report, “Slow Start to Implementation of Justifications for 8(a) Sole-Source Contracts” (GAO-13-118). The GAO report recommended that the Office of Federal Procurement Policy (“OFPP”), in consultation with the FAR Council, promulgate guidance to clarify the circumstances in which an 8(a) justification is required. As recommended, OFPP and the FAR Council agree to amend the FAR with guidance that will: (1) clarify whether an 8(a) justification is required for 8(a) contracts that are subject to a pre-existing Competition in Contracting Act of 1984 class justification; (2) provide additional information on actions contracting officers should take to comply with the justification requirement when the contract value rises above or falls below \$22 million between the Small Business Administration's acceptance of the contract for negotiation under the 8(a) Program and the contract award; and (3) clarify whether and under what circumstances a separate sole-source justification is necessary for out-of-scope modifications to 8(a) sole-source contracts. The intent of the proposed rule is to further clarify the processes and procedures in the FAR to ensure uniform, consistent, and coherent guidance regarding the use of sole-source 8(a) justifications, [81 Fed. Reg. 80012](#). Comments to the proposed rule are due by January 17, 2017.

Federal Acquisition Regulation (“FAR”) Technical Amendments

DOD, GSA, and NASA have issued technical amendments to the FAR in order to make editorial changes to sections 2.101, 7.105, 19.1506, 34.000, 34.005-2, 34.201, 34.203, 42.709, 52.234-2, 52.234-3, and 52.234-4. Included in these technical amendments are revisions to Part 19 Small Business Program, section 19.5106 Women-Owned Small Business Program sole source awards, to read as follows: (a) A contracting officer shall consider a contract award to an EDWOSB concern on a sole source basis (see 6.302-5(b)(7)) before considering small business set-asides (see 19.203 and subpart 19.5) provided none of the exclusions at 19.1504 apply and (1) The acquisition is assigned a

NAICS code in which SBA has determined that WOSB concerns are underrepresented in federal procurement; (2) The contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB concerns; and (3) the conditions in paragraph (c) of this section exist. (b) A contracting officer shall consider a contract award to a WOSB concern (including EDWOSB concerns) eligible under the WOSB Program on a sole source basis (see 6.302-5(b)(7)) before considering small business set-asides (see 19.203 and subpart 19.5) provided none of the exclusions at 19.1504 apply and (1) the acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in federal procurement; (2) The contracting officer does not have a reasonable expectation that offers would be received from two or more WOSB concerns (including EDWOSB concerns); and (3) The conditions in paragraph (c) of this section exist. (c)(1) The anticipated award price of the contract, including options, will not exceed: (i) \$6.5 million for a requirement within the NAICS codes for manufacturing; or (ii) \$4 million for a requirement within any other NAICS codes. (2) The EDWOSB concern or WOSB concern has been determined to be a responsible contractor with respect to performance. (3) The award can be made at a fair and reasonable price. (d) The SBA has the right to appeal the contracting officer's decision not to make a sole source award to either an EDWOSB concern or WOSB concern eligible under the WOSB Program; [81 Fed. Reg. 83103](#).

OTHER GOVERNMENT CONTRACTING NEWS

“GAO: Agencies need more access to databases to stop improper payments.”

Federal News Radio, Nov. 15, 2016. Retrieved from <http://federalnewsradio.com>.

The system developed by the Treasury Department and the Office of Management and Budget to reduce improper payments doesn't give agencies full access to the databases required to determine whether improper payments were actually made. The GAO said the Do Not Pay Working system offers only partial or no access to three of the six databases required by the Improper Payments Elimination and Recovery Improvement Act of 2012.

“GSA working on changes to FAR, new legislation to help agencies buy cloud.”

Federal News Radio, Nov. 16, 2016. Retrieved from <http://federalnewsradio.com>.

The GSA is working on a series of new changes to the Federal Acquisition Regulation (FAR) and a potential legislative proposal to help agencies buy cloud computing services as a “utility.” Richard Blake, senior technologist for the Integrated Technology Service at GSA's Federal Acquisition Service seemingly defined the idea of cloud computing as a “utility” stating that “Cloud is not IT...Cloud is a service that happens to deliver IT, so it's IT as a service.” Some may find this confusing given that the creation and upkeep of a cloud computing platform involves significant traditional IT services, often to an unknown extent. Regardless, the GSA is hoping to receive support from the Office of Management and Budget and attach the proposed legislation to the National Defense Authorization Act for Senate approval. The GSA is also contemplating changes to the FAR to create a new contracting type to include cloud services instead of a “time and materials” purchase model contracting officers currently use.

“Chabot, Velazquez Challenge OMB on Procurement Policy.” *House Committee on Small Business Press Release*, Nov. 10, 2016. Retrieved from <http://smallbusiness.house.gov>.

In a comment letter sent to the Office of Federal Procurement Policy (“OFPP”), House Small Business Committee Chairman Steve Chabot (R-OH) and Ranking Member Nydia M. Velazquez (D-NY) criticized the implementation of Category Management procurement policy for negatively impacting small businesses, [Comment Letter](#).

“DOL Persuader Rule Permanently Blocked By Texas Judge.” *Law360*, Nov. 16, 2016.

U.S. Northern District of Texas Court Judge Samuel R. Cummings permanently blocked the U.S. Department of Labor from enforcing a new rule which would have expanded employers’ disclosure requirements for consultants and attorneys hired to fight unionization.

“GSA to launch cloud based contract writing system.” *Federal Times*, Nov. 16, 2016. Retrieved from <http://www.federaltimes.com>.

GSA is launching a new cloud-based, shared-service contract writing and administration system anticipated to be available by the third quarter of fiscal 2017. The CAP Contract Writing System-as-a-Service (CWSS) will guide contracting and program offices through the contract process from planning and requisition creation to solicitation publishing, award, and closeout. CWSS will follow a workflow process methodology, providing real-time notifications of both work in progress and metrics as actions progress through lifecycle states, all while GSA handles security accreditation, ongoing operations, and maintenance.