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### 13. SUPPLEMENTARY NOTES

2006 Air Force Advance Planning Briefing to Industry (APBI), May 23, 2006, Dayton, OH

### 14. ABSTRACT

### 15. SUBJECT TERMS

### 16. SECURITY CLASSIFICATION OF:

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### 17. LIMITATION OF ABSTRACT
Same as Report (SAR)

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Items of Interest

• Size Recertification
• Limitation on Subcontracting
• Teaming
• Source Selection of Small Business Participation
• Role of the Small Business Office
• Questions
Size Recertification

Should SBs recertify size at time of issuance of orders under multiple award ID/IQs?

- SBs grow to be LB under large MAC ID/IQs
- Historically, a SB was considered small for the life of the ID/IQ contract; recent rulings have allowed recertification at time of order issuance

Recent Case at OO-ALC

- Original MAC ID/IQ awarded 2001 (5SB, 6 LB, 15-year contract)
- SBSA in 2005; asked companies to recertify
- SB did not recertify; used original certification of SB status
- Hill CO appealed to SBA
  - SBA Philadelphia: size status is small based on original cert
  - SBA OHA overturned; SB not small for this procurement
- Hill awarded to next low acceptable SB
- SB protested award; sought injunctive relief
- U. S. Court of Claims Ruling
  - AF within rights to recertify
  - Agreed with SBA OHA: underlying contract is framework for future competition for contracts
  - Task order constitutes new procurement

Concern: if no policy exists, no consistency concerning recertification among various buying offices
Size Recertification

• Current Regulations
  – 13 CFR 124.503(h) - re: 8(a) Program:
    “Unlike Basic Ordering Agreements, Multiple Award and FSS contracts are contracts. Orders issued under these contracts are not considered separate contracts.” Subpara (2): “A concern may continue to accept new orders under a MA or FSS contract even where...the concern becomes other than small for the SIC code assigned under the contract subsequent to award of the contract.”

  – 13 CFR 121.404
    Subpara (a) SBA determines the size status as of the date the concern submits a written self-certification that it is small as part of its initial offer which includes price.
    Subpara (g) A concern that qualified as a SB at the time it receives a contract is considered a SB throughout the life of that contract.
Size Recertification

Recent Rulings
- SBA OHA (SIZ-4477, SETA Corp and FEMA, March 2002)
  - RFQ issued against GSA FSS
  - RFQ is a new procurement; RFQ is correct time to establish size
- GAO Case (CMS Info Systems, 7 Aug 02, B-290541)
  - SB awards must actually be performed by SBs
  - COs have right to require recertification at time of order under competitive SBSA RFQs against GSA MASs
- SBA OHA (SIZ-2003-11-25-71, Advanced Mgmt Tech, Jun 04)
  - Offerors must be small as of date of proposal/quote at order level

SBA Proposed Rule  RIN 3245-AF06, 25 Apr 03
- Address time at which size is determined for FSS, MACs, GWACs
- Proposed to amend CFR to require annual recertification
- AFMC/PK position: disagreed (SB impacts/increase workloads)
- Current status: at OMB; no date for publication
Size Recertification

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• Implications
  – Big impact on SB awards, particularly in today’s acquisition environment of long-term, broad-scoped MACs
    • Example: Commodity Councils – a large award to a SB will cause it to quickly grow out of SB status; all awards will then be going to LB
  – No current rules/guidance, except
    • Joint letter between SAF/AQC and SAF/SB, signed 10 May 06
      – Recent ruling regarding COs requiring SB recertification on delivery orders
        » Not interpreted as a precedence, but proposition that under appropriate circumstances, the CO retains the discretion to request recertification before award of a delivery order, task order or the exercise of an option

• Recommendation
  – Issue policy that acquisition strategy, as well as resulting RFP and DD Form 2579, should include guidelines/rules for recertification based on what makes sense for that specific acquisition
Limitation on Subcontracting

• Services = 50% of personnel costs in house
• Manufacturing = 50% of cost of production (excl material) in house
• Gen construction = 15% of cost of contract (excl materials) in house
• Special trade construction = 25% of cost of contract (excl materials) in house

Ref: FAR 52.219-14
Limitation on Subcontracting

SBSA, 8a competitive, 8a sole source
• Cooperative efforts of small prime and small 1st tier subs

HUBZone, SDVOSB
• Small 1st tier subs must be HUBZone or SDVOSB
Why Team?

- Enables firms to complement each other’s capabilities
- Enables firms to offer the best combination of performance, cost & delivery
- Enables SBs to effectively compete for larger scale requirements
Types of Business Relationships

- **Prime/Subcontractor Relationship**
  - Prime is responsible for contract performance
  - Government has privity of contract only with the prime
  - Relationships normally identified before offer is submitted

- **Joint Ventures**
  - Contract in Joint Venture’s name
  - Contract performance responsibility lies with Joint Venture
  - Agreement must include sharing profit/losses proportionate to each party’s contributions to business operations
Selecting Teaming Partners

• Compatible contractors
• Teaming agreement
  – All must understand terms and conditions of agreement
• Assess team member capabilities
  – Business, financial, other resources
• Assess team member past performance
• Assess legal constraints
  – Organizational conflicts of interest
  – Debarments/suspensions
  – Qualification requirements
• Assess team chemistry
  – Management styles, corporate cultures, strategic visions
Teaming Benefits

- Teaming can expand opportunities
- Teaming can be a winning situation for all parties

Coming Together is Beginning,
Keeping Together is Progress,
Working Together is Success

- Henry Ford -
Evaluating SB Participation

Issue: How to evaluate a potential prime contractor’s SB (or socioeconomic) program
  – Developing a evaluation factor
  – Developing a meaningful metric
  – Evaluating performance (post award)

Considerations/Challenges/Obstacles:
  – Different types of bidders (e.g. SB, LB, non-profit)
  – Different types of subcontracting plans
    • Individual Plan
    • Commercial Plan
    • Comprehensive Test Plan
Evaluating SB Participation

- Two principal areas of consideration:
  - Past Performance
  - Prospective Performance (what happens if I am awarded the contract)

- Special Factors / areas of consideration:
  - SDB participation
  - Bundling
Evaluating SB Participation – PAST PERFORMANCE

• DFARS 215.305(a)(2) – Past performance evaluation --- Evaluation factors shall include:
  
  – 52.219-8, Utilization of SB, SDB, WOSB, compliance
    – *(maximum practicable opportunity)*
  
  – 52.219-9, SB, SDB, WOSB Subcontracting Plan, compliance
Evaluating SB Participation

PROSPECTIVE PROGRAM

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- DFARS 215.304 – Evaluation Factors & Significant Subfactors

  - (c)(i) In acq. that require 52.219-9 (subcontracting plan), extent of SB participation **SHALL** be addressed in source selection.

  - CO **SHALL** evaluate the extend to which offerors identify & commit to SB in contract performance …
Evaluating SB Participation –
PAST PERFORMANCE

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• FAR15.304 – Evaluation Factors & Significant Subfactors
  – (c)(3)(i)… Past performance **SHALL** be evaluated in all source selections for negotiated competitive acquisitions expected to exceed $1M

• FAR15.305(a) – Proposal Evaluation ---
  Past Performance Evaluation
  – (2)(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for SDB …
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Evaluating SB Participation

PROSPECTIVE PROGRAM

• DFARS 215.304 – Evaluation Factors & Significant Subfactors (continued)

• (A) Evaluation factors **MAY** include – (among other things)
  - Extent SB are identified in proposals
  - Extent of commitment to use SB
  - Complexity & variety of work SB will perform
    • - Past performance in complying with 52.219-8 and -9
    • - Participation in terms of total acquisition value

• (B) Proposals addressing the extent of SB performance **may be separate from subcontracting plans** (FAR 52.219-9) and should be structured to allow for consideration from SB.
Evaluating SB Participation
PROSPECTIVE PROGRAM

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• ONE SIZE DOES NOT FIT ALL!

Typical Scenarios –

• Sole Source (Comprehensive plan participant)
• Full and Open (Market Research - only Comprehensive plan participants)
• Full and Open (Market Research – only LB)
• Full and Open (Market Research – various types)
Evaluating SB Participation
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– Key Questions –

- Market Research
- What makes sense for the particular acquisition?
- What are we trying to evaluate?
- Discriminators
- Factor
  » Metric
  » Post Award
  » Past Performance
Role of the Small Business Office

• Duties and Responsibilities
  – Aid, assist and counsel small business
  – Enhance small business participation in acquisitions
  – Assist in conducting market research
  – Review/coordinate on internal documents
    • Subcontracting Plans, Acquisition Plans, etc.
  – Manage our outreach program

The Small Business Office is the first stop for all small businesses who are interested in doing business with Wright-Patterson Air Force Base
Small Business Office Contacts

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QUESTIONS