



# Small Business Perspectives

## National Defense Industrial Association

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# USAF Electronic Systems Center

Office of Small Business Programs ESC/SB

## June 2009

# Small Business Topics

Presented by  
Bill Donaldson  
(781) 377-2533



# OVERVIEW

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- **News Items in the Small Business World**
  - **Rothe Development Corporation (US Court of Appeals)**
  - **International Program Group (GAO)**
  - **Delex Systems Inc. (GAO)**
  
- **Electronic System Center Opportunities**
- **Advice to Small Businesses - Subcontracting**
- **Questions**



# Small Business News

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## 1. Rothe Development Corporation

- Stems from 1990 contract; U.S. Court of Appeals (West Texas District) finding on 4 Nov 08
- Potential impact on Small Disadvantaged Business
- At issue is SDB classification, goal and related issues
- Status: All over say for legal fees!
- **Policy/Regulation Changes**
  - **Eliminated the HBCU/MI goal**
  - **No effect on SDB status**



## Small Business News (con.)

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### 2. International Program Group (IPG) Inc.

- Stems from IPG protest to GAO; GAO finding on 19 Sep 08
- Potential impact on **HubZone** / **SDVOSB** Set Asides
- At issue is **precedence** of aforementioned Set Asides
- GAO: HubZone S/A Mandatory when 2 or more capable **AND** 2 or more offers expected at Fair Market Price
- At issue is contracting officer discretion between the two
- **Policy/Regulation Changes**
  - **HubZone trumps SDVOSB status**



## Small Business News (con.)

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### 3. Delex Systems Inc.

- Stems from Jun 08 Delex protest to GAO; GAO finding on 8 Oct 08
- Potential impact on Fair Opportunity (FAR 16.505(b))
- At issue is FAR 19.502-2(b) (Small Business Set Asides) **harmonization** with FAR 16.505(b) on M/A IDIQ contracts
- Allows SB set asides in a *Fair Opportunity* Environment
  - Set-aside provisions (Rule of Two) apply to Task/Delivery Orders
  - TOs & DOs considered individual contracts
- Status: Undergoing scrutiny by DOJ & OSD for effect on DoD programs - 15 Dec 08 Washington, DC Conference.



## Delex....(Continued)

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- Policy/Regulation Changes
  - In “Standby Mode”
  - Awaiting direction from OSD, OFPP or FAR
- Potential Outcomes:
  - Requiring Activity will complete Market Research as to SB capability & order of Precedence – 8(a) – HubZone – SDV
  - RFIs to SBs to determine if two or more are capable and will submit proposal (Navy PCO assumed not - w/o contacting)
  - Must be able to perform 50% of work – Limitations of Subcontracting Clause (FAR 52.219-14)
  - SBs must have capacity & capability
  - DD Form 2579 – Small Business Coordination required for each TO/DO – No “Blanket” 2579s!



## Delex....(Continued)

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- GAO (and SBA's) Logic:
  - “Rule of Two” implements Small Business Act (1953) and operates independently of FAR Part 6.
  - Nothing in CICA (1984) or Federal Acquisition Streamlining Act (1994) exempts TOs & DOs from the “Rule of Two”
  
- Implications:
  - Although GAO decisions are not binding on govt agencies, they are almost always followed, in part because any noncompliance is reported to Congress.



## Delex....(Continued)

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### ■ Implications:

- Procurement delays likely as govt agencies conduct requisite Market Research – more written determinations likely – Last Line in FAR Part 10: “Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.”
- Negates some of the simplicity of M/A IDIQs
- **No effect on GSA’s Multiple Award Schedule (MAS) Program** - Delex D/N overturn GAO’s prior decisions that Small Business Set asides do not apply to GSA’s MAS ordering procedures (FAR 8.404(a) & FAR 19.502-1) Both indicate SBSA Requirements D/N apply to MAS contracts.
- Due to the way the SBA of 1953 is written, there is potential to petition FAR Councils & OFPP to exempt M/A IDIQs from the “Rule of Two” as done with GSA’s MAS.



## Delex....(Continued)

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- So, Why the Delay?
  - Both proponents and opponents of the Delex decision are engaging in lobbying activities in connection with the ruling.
  
- In the Big Picture...
  - Delex is the first published GAO decision sustaining a bid protest under its new jurisdiction (May 27, 2008) over TOs and DOs of \$10M and more.
  - Since then, more than 70 such protests were filed – most are still pending at GAO.



## Electronic System Center Opportunities

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- The United States Air Force Electronics System Center is a Research, Development, Test and Evaluation (RDT&E) Center. Our opportunities, as well as points of contact can be found at:  
<http://www.herbb.hanscom.af.mil/> . When there, be sure to sign up for free email updates in the yellow box. Our opportunities can be found in the “Business Opportunities” box in the upper right hand corner of the home page.
- Call me at (781) 377-2533 or  
[bill.donaldson@hanscom.af.mil](mailto:bill.donaldson@hanscom.af.mil)



# Advice to Small Businesses

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The HERBB is not a panacea – among my peeves:

- Dollar Values not always advertised
- Interchangeable use of “RFI” and “SSS”
  - Look closely
  - Never ASSUME
- Support Contractors are just that – not competitors!
- Unresponsive PCOs, PMs – Call me!
- Some items – “Long of Tooth”



## Advice to Small Businesses (con.)

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- Consider RFIs an ESSAY TEST – not FIB or T/F!
  - Sure you can't do everything – can you do half?
    - Explain how your team will do what you can't – be specific!
    - Use “big brother” to help w/ shortcomings
    - Know FAR 52.219-14 – Limitations on Subcontracting
    - 50% v 51%...or 15% (Construction) or 25% (Special Trades).....
  - Timeliness is important, but sometimes not critical.
- Involve the SB Specialist early – Communicate!
- Attend Industry Days – Network, Network, Network!
- Let me do a Capability Briefing....PLEASE!!!
  - Industry Days – seldom used optimally by SBs.
  - Bring a “Gun” to the Gunfight – Knives don't do too well!



## Subcontracting May be the Way

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- In the DoD, since 1989 - Small Businesses average over 39% of Large Business subcontract dollars!
  - Goal is currently 37.2%
  - “Bad” years were:
    - 1991 – 34%
    - 2002 – 34.1%
    - 2004 – 34.5%
  - All other years ranged 37.0 to 42.5%

*There are significant Subcontracting Opportunities!*



## Subcontracting Philosophy

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- FAR 19.7 Requires large businesses to make a **good faith** effort to increase small business participation in their USG Contracts .
- 5 U.S.C. 637(d)(4)(f) directs that a contractor's failure to make a **good faith** effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.
- Contractor Performance Assessment Reporting System (**CPARs**) now considers subcontracting performance!



# CPARS Subcontracting Assessment

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- Compliance with terms and conditions of the contract for Small Business participation
- Compliance with individual subcontracting plan
  - Good faith effort towards meeting goals
  - Identification of potential sources and efforts made to assure SB had equitable opportunity to compete
  - Data from eSRS / SF 294s/295s
- Compliance with comprehensive plan including submission of any required program specific data
- May require DCMA/ACO/PCO input



## CPAR Mechanics

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- ...In the Evaluation Areas of Block 18, the Assessing Official should assess whether the contractor met small/small disadvantaged and women-owned business participation goals in the Subcontract Management area on the Systems CPARS form and in the Business Relations area on the Services and IT CPARS form.
  
- Source: CPARS Instructions



## How to Become a Supplier/Subcontractor

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- Potential Supplier:
  - Contact LB's Small Business Liaison Officer
  - Become familiar LB's Products & Requirements
  - Submit Letter of Intro & Company Info to SBLO
- Large Business:
  - Advises Supplier on Potential Subcontracting Opportunities
  - Forwards materials to Purchasing/Engineering/Other Using Organizations
  - Performs supplier evaluation



## How to Become a Supplier/Subcontractor (cont.)

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- Typical Supplier Information Required:
  - -Type of Business                      -Number of Employees
  - -Financial Profile                      -Principal Product/Service
  - -Areas of Product Interest
  - -Description of Facilities/Equipment/Technical Capabilities
  - -Quality Assurance Standards (ISO Certification, Lean Principles, Six Sigma)
  - -Certifications – Small Business Categories
  - -North American Industrial Classification Codes



## How to Become a Supplier/Subcontractor (cont.)

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- What Works:
  - Credibility
  - Quality Products – on time delivery – cost affordability
  - Proven Performance
  - Conferences/Trade Fairs – **INDUSTRY DAYS!!!**
  - Perseverance
  - Knowing the System
- What Doesn't:
  - Contacting High Level Executives
  - Demanding Business
  - Being Unprepared
  - Not Doing Your Homework



# ESC Office of Small Business Programs

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## QUESTIONS?

