

2012 Joint Warfighting Conference

AFCEA Hampton Roads and Tidewater Chapter Small Business Forum

**“Learn the Rules of the Federal Contracting Game
for Small Business”**

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Recent Regulatory Changes Affecting Small Businesses

1. Small Business Size & Integrity
2. Small Business Subcontracting
3. Small Business Set-Asides Under Multiple-Award Contracts

[Office of Federal Procurement Policy \(“OFPP”\) Memorandum](#), February 2, 2011, “Myth-Busting: Addressing Misconceptions to Improve Communications with Industry During the Acquisition Process”

[OFPP Memorandum](#), May 7, 2012, “Myth-Busting 2: Addressing Misconceptions and Further Improving Communication During the Acquisition Process”

1. Small Business Size & Integrity

- SBA Proposed Rule issued October 7, 2011
[76 Fed. Reg. 62313](#)
- Regulations required by the [Small Business Jobs Act of 2010](#) which established a statutory presumption of loss equal to the value of the contract when a concern willfully seeks and receives an award by misrepresentation.

Small Business Size & Integrity

- Certain actions are deemed affirmative, willful and intentional certifications
 - Submission of a bid or proposal or registration on any Federal database for the purpose of being considered for:
 - Federal Grants
 - Contracts
 - Subcontracts
 - Cooperative Agreements
 - Research & Development Agreements
 - reserved, set-aside, or otherwise classified as intended for small business (or)
 - which in any way encourages a federal agency to classify the bid or proposal, if awarded, as an award to a small business

Small Business Size & Integrity

- Penalty:
 - Value of contract performed
- Additional Penalties:
 - Suspension or debarment
 - False Claims Act civil penalties
- Applies to all programs–misrepresentation as to status as:
 - HUBZone
 - 8(a)
 - SDB
 - SDVOSB
 - WOSB

2. Small Business Subcontracting

- Regulations required to implement provisions of the Small Business Jobs Act of 2010
- SBA issued proposed rule on October 5, 2011
[76 Fed. Reg. 61626](#)
- Amends regulations to provide for a “covered contract”
 - A contract for which a small business subcontracting plan is required
 - Currently valued above \$1.5 million for construction and \$650,000 for all other contracts

Small Business Subcontracting

- Protections for Subcontractors
- Prime contractor must notify the CO when the Prime:
 - Fails to utilize a proposed subcontractor during contract performance
 - Reduces payments to a subcontractor or is > 90 days late
- Prime cannot prohibit subcontractor from discussing payment or utilization concerns with the government
- Prime must assign individual NAICS codes to their subcontracts and submit timely reports online at www.esrs.gov
- CO may require a subcontracting plan if a firm's size status changes to other than small on contracts with durations of > 5 years.

Small Business Subcontracting

- Contracting Officer Responsibilities:
 - CO will be responsible for monitoring compliance of the subcontracting plan
 - Ensuring that contractors submit their subcontracting reports within 30 days after report ending date
 - Reviewing all reports within 60 days
 - Evaluating whether prime contractor has made a good faith effort to comply
 - Evaluating whether prime contractor has a history of untimely or reduced payments and, if so, record such in the Federal Awardee Performance and Integrity Information System (FAPIIS)

3. Set-Asides Under Multiple-Award Contracts

[76 Fed. Reg. 68032](#) (Nov. 2, 2011)

Federal agencies may:

- Set aside part or parts of a multiple-award contract for small business concerns;
- Set aside orders placed against multiple-award contracts for small business concerns; and
- Reserve one or more contract awards for small business concerns under full and open multiple-award procurements.

- [Office of Federal Procurement Policy \(“OFPP”\) Memorandum](#), February 2, 2011, “Myth-Busting: Addressing Misconceptions to Improve Communications with Industry during the Acquisition Process”
- [OFPP Memorandum](#), May 7, 2012, “Myth-Busting 2: Addressing Misconceptions and Further Improving Communication During the Acquisition Process”