



# Contracting Update

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# Current Issues

- ▼ Legal and Regulatory Requirements
  - Increased Oversight
  - Transparency
  - Small Business Program
  
- ▼ Policies
  - Efficiency
  
- ▼ Initiatives



# Legal and Regulatory Requirements

## Increased Oversight

### ▼ Peer Reviews:

- Promote quality and consistency in DoD contracting
- Share best practices and lessons learned across DoD
  - Emphasis; Acquisition Strategy; Source Selection; Competition; Contract Type
  
- Review Thresholds:
  - >\$100M (Services; Special Interest Items) DASN ACQ; Acquisition Strategy
  - > \$250M DASN AL&M; Pre RFP Release
  - >\$1B DoD
    - Pre RFP Release
    - Pre Best and Final (FPR)
    - Pre Award
    - Post-award (Prior to Exercising Options)
  - <\$100M Local Peer Review Process
    - >\$5M Pre RFP Release
    - Pre Award if Award to Other Than High Technical Low Cost



# Legal and Regulatory Requirements

## Increased Scrutiny

- ▼ Use and Administration of Incentive Fee Contracts,
  - Determination and Findings required prior to use of all Incentive and Award Fee type contracts
  - Award fees must be linked to acquisition objectives in the areas of cost, schedule, and technical performance
  - Narrative ratings prescribed that will be utilized in award fee evaluations
  - Prohibits award fees if contractor's overall performance is not satisfactory
  - Prohibits the "rollover" of unearned Award Fees from one evaluation period to another
  - Prohibits the "provisional payment" of Award Fee.
  
- ▼ DoD Developing Department-Wide Source Selection Guidance
  - October 2010 Comptroller General Study on DoD Procurement; Non-cost Evaluation Factors More Important than Cost/Price
    - (National Defense Authorization Act of 2010 (Oct 28, 2009))



# Legal and Regulatory Requirements Transparency

- ▼ Federal Funding Accountability & Transparency Act of 2006 (FFATA); Amended 8 July 2010
  - Requires contractors to report first-tier subcontracts  $\geq$ \$25,000 ([www.fsrs.gov](http://www.fsrs.gov))
    - Originally threshold was \$1 million
  - Contractors & first-tier subs must disclose compensation of their top five executives
  - Rule amends the Federal Acquisition Regulation to implement the FFATA of 2006
    - Implementation:
      - 1 October 2010 – 28 February 2011, prime contracts > \$550,000
      - *Effective 1 March 2011, reporting required in all contracts > \$25,000*
  
- ▼ Publicizing J&As for Non-Competitive contracts
  - FY08 DoD Authorization Act – Effective July 2010
  - J&A must be posted within 14 days of contract award (30 days if unusual and compelling urgency)
  - J&A's must remain posted for a minimum of 30 days



# Legal and Regulatory Requirements Transparency

## ▼ Earmarks

- DoD contracts associated with congressional earmarks must comply with the FAR and DFARS.
- DoD must comply with a June 7, 2010 memo requiring personnel to identify certain earmarks in the FY10 defense appropriations act, to ensure those earmarks are subject to full and open competition.
- The Aug. 10, 2010 memo asked DoD entities to “ensure that individual and organizational procurement procedures relating to earmark contract awards are consistent with governing law and regulation.”
- House Earmark – Requires full and open competition.
- Senate Earmarks Senate Rules (no “new” non-competitive).



# Legal and Regulatory Requirements Small Business

## ▼ 2010 Small Business Jobs Act

- Old language gave an unambiguous preference for HUBZone firms.
- New act will place all small business program and HUBZone companies on the same level.

## ▼ Women Owned Small Business Program (Feb 2011)

- Contracting officers may set aside contracts for WOSBs or EDWOSBs (EDWOSB; Personal Net Worth <\$750K)
  - WOSB Set-aside; Substantially underrepresented (38 NAICS)
  - EDWOSB Set-aside; WOSB Underrepresented (45 NAICS)
- Rule of two - reasonable expectation that 2 or more WOSB/EDWOSB will submit an offer
- Anticipated Award <\$5M (Manufacturing) or \$3M (Other Industries)
- *To participate in the WOSB program, you must have a GLS account:*  
<https://eweb.sba.gov/gls>



# Policies - Efficiency

- ▼ OUSD Memo 14 September 2010; Better Buying Power
  - OBJECTIVE: Scrutinize contract terms to ensure they do not contain inefficiencies or unneeded overhead. (Note: The savings being sought will take years.)
  - DoD cannot get there alone – has solicited industry input.
  
- ▼ Estimate ~ \$400B of DoD \$700B Budget is Spent on Contract; divided equally between products and services. (At SSC Pacific ~ 60% of project execution is via contract; just over \$1B/year)
  - Establish a Senior Manager for the acquisition of services (e.g PEO for Services)
  - Adopt a uniform taxonomy for services; use Product Service Code categories for collecting data and managing services



# Policies - Efficiency

## ▼ OUSD Memo 14 September 2010; Better Buying Power (continued)

- Improve the “Tradecraft” in the Acquisition of Services
  - PWS Templates
  - Improve the use of Market Research
- Increased Scrutiny on the use of Time & Material; Cost; and Award Fee Contracts
  - Promote use of Fixed-Price Incentive Fee Contracts
- Increase Small Business Participation by:
  - Weighting factors in past performance and fee construct
  - Competing more Multiple Award Contracts amongst Small Business
- Promote “real” competition
  - Mandatory cost/price based negotiations when a single offer is received
  - More frequent re-competes (3-5 years for services)
  - Competitive Advocates will be required to develop a plan to improve overall competition
  - Ensure reasonable period of time for responses to solicitations; extend 30 days if only 1 offer received and solicitation open < 30 days



# Policies – Efficiency

## ▼ Strategic Sourcing

- November 2008, ASN (RD&A) formally established the DON Strategic Sourcing Governance Structure and Charter
- NAVSUP Navy's Executive Agent - Strategic Sourcing Program Office
- Focus Now on Services
  - Information Technology; Program Management; Logistics
  - Technical and Engineering Services; Equipment Maintenance and Repair

## ▼ Goals:

- Improve Coordination and Collaboration Across the Navy-
- Share Best Practices
- Streamline and Standardize Processes
- Improve the Management of Navy Requirements
- Minimize cost/price – Maximize Value
- Better Achieve Socio-Economic Goals



# Initiatives

- ▼ Standardized Process for Technical Evaluation Boards
- ▼ Phase Out Practice of “Fee per Hour”
  - Fee at Task Order – Commensurate to Risk; Cost-Schedule-Performance/Technical
- ▼ Increased Scrutiny on Procurement Lead Time
  - Ensuring Adequate Time for Proposal Submission
  - Increasing Focus on Time to Evaluate and Award Contracts
- ▼ LSS Events - Completed
  - Simplified Acquisition Process (Completed)
    - Improve Cycle Time
  - Task Order/Delivery Order Process (Completed)
    - Standardization; Improve Cycle Time
- ▼ LSS Events – In Process
  - Streamline Management of CDRLs
- ▼ LSS Events - Planned
  - Large Contracts; Procurement Process (Receipt of a Requirement through Contract Award)
  - Award of Contracts and Grants in Support of DARPA Requirements
- ▼ DoN Strategic Sourcing Team
  - Information Technology Services