Welcome to Overcoming Small Business Challenges In Today’s Federal Marketplace

**Moderator:** Ryan Wasmus, Cherokee Nation Businesses

**Speakers:**
- Ms. Mary Urey, AFCEC
- Mr. Greg Kilkenny, Cherokee Nation Businesses
- Ms. Melea Crouse, USACE, SPD/SWD
- Mr. Richard Oliver, McKenna Long & Aldridge LLP
IMPACT & OPPORTUNITY

Why Does This Matter? & How Do You Apply It?

Ms. Mary Urey- USAF 772<sup>nd</sup> ESG/SB
Mr. Greg Kilkenny- President CNTS

Hosted by the Society of American Military Engineers HQ and the San Diego Post
FPDS as a Business Development Tool

- FPDS v Leading BD Intel Portal
  - FPDS shows you the past; it’s free and factual
  - BD intel predicts Future; it’s speculative and costly
  - Where do BD Intel Firms Pull Majority of Data?

What’s my Budget & Where Do I Invest to Max ROI
FPDS as a Business Development Tool (cont.)

- **Informs Market Strategies within Air Force and Army**
  - Easy to export spreadsheet simplifies competitive analysis
  - Prior year contract data; no more “educated guesses”
    - ROM
    - Incumbent(s)
    - PoP

- **Visibility into your Firm’s portfolio**
  - You see what Government sees
  - Validates your BD assumptions (*e.g.* TCV; small business size, etc.)
Proposed Changes to SB Jobs Act

*Key Takeaways for Owners*

- **Sub-Contracting**
  - Prime must provide explanation if reduction or lag (+90 days) in payments to SB sub-contractors
  - Contracting officer must evaluate prime’s explanations
  - Negative trends MUST go into Federal Awardee Performance and Integrity Information System (FAPIIS)
Proposed Changes to SB Jobs Act (cont)

Key Takeaways for Owners

• For Small Business qualification, entity must be small on Date of:
  – application, AND
  – formal program office request
  – *Should Size Determination Be Affected by Length of the Request Process?*
Proposed Changes to SB Jobs Act

*Key Takeaways for Owners*

- **New Mentor-Protégé Programs Authorized**
  - SDVO SBCs
  - WOSBCs
  - HUBZone SBCs
Proposed Changes to SB Jobs Act

*Key Takeaways for Owners*

- **New Ombudsman Role at DCAA**
  - A Good Start for Overcoming Historic Small Business Barriers to Entry
  - Obstacles exist even for the most savvy small business owner
FEDERAL PROCUREMENT DATA SYSTEM OVERVIEW (FPDS-NG)

MS MELEA CROUSE
Director, Small Business Programs
USACE-SWD
SESSION AGENDA

- Defining the Federal Procurement Data System (FPDS-NG)
- What’s In It for You; Private Sector Use?
- Couple of Tips/Tricks
- Now You Try!
- Open Invitation for Questions
FPDS-NG IS...

- Single Authoritative repository for Federal contract data; Housed at GSA’s Federal Procurement Data Center

- Agencies required to log ALL contract actions when:
  - Appropriated funds expensed in excess of $3,000 (3k)
  - Every contract mod is reported, regardless of $ value

Additional Details Located at FPDS-NG FAQ Page
FPDS-NG DEFINED (cont.)

- Certain **ACTIONS** have other funding sources and those are **NOT** required in FPDS:
  - Financial Assistance Programs (Grants/Subsidies)
  - Government OPEX Funds
  - GSA Consolidated Purchase Program (State/Local Gov)

- **Authoritative Sources Of Reference Data**
  - SAM (CCR)
  - NAICS
  - PSC Codes
  - Agency Hierarchy
  - Zip Code
  - FIPS

- **Validation rules based on:**
  - FAR
  - Individual Agency Regulations (e.g. DFARS)
FPDS-NG DEFINED (cont.)

- **General Contract Data**
  - **Dates**
    - Date Signed
    - Date Effective
    - Last Date to Order
    - Completion Date
  - **Amounts**
    - Action Obligation
    - Value of Base + Options
  - **Contractor Information**
    - SAM information
    - Socio/Economic Data
  - **Preference Programs**
    - KO’s Business Size Selection
    - Subcontracting Plan Req’ments

- **Legislative Mandates**
  - Walsh Healey Act
  - Davis Bacon Act

- **Service/Commodity Information**
  - Service Code
  - NAICS Code

- **Competition Information**
  - Extent Competed
  - Type of Set Asides
  - Sole Source
  - Award Type

- **Buying Activity’s Customers**
  - Funding Agency ID
  - TAS Identifier
  - TAS Main Account

- **Contracting Office Information**
PRIVATE SECTOR USES

FPDS Provides Detailed Information To Capture Your Marketing/Planning Strategy:

- **Key Contract Vehicle Data**
  - Total Contract Value
  - Period of Performance Dates
  - How Many Bids Were Received
  - Scope of Work
  - Place of Performance

- **Key Task Order Data**
  - Who’s winning task orders; most $ and #?
  - What Client(s) use what vehicle(s)?
  - What type of work is acquired?

Is it a bird? No…it’s a CAR!

SAME 2013 Joint Engineer Conference & Expo • May 21-24 • San Diego, Calif.
PRIVATE SECTOR USES (Cont.)

- FPDS Facilitates Accelerated Data For Analysis:
  - Prints Directly to PDF
  - Imports Data to Excel
  - Provides Email Capability
  - Provides Data Across 22 Core Elements

![Table and Pie Chart]

Quickly Converts Data into Presentable Formats
TIPS & TRICKS

- FPDS is largest source for BD intelligence providers
- FPDS provides visibility into acquisition trends
- Use data export feature for faster data sorts in Excel
- FPDS-NG is USASpending.gov’s source for contract data; pulls data once a month

Now….Let’s Run a Few Scenarios Together!!
<table>
<thead>
<tr>
<th>Award ID (Mod/Id)</th>
<th>Vendor Name</th>
<th>Contracting Agency</th>
<th>Award Type</th>
<th>Date Signed</th>
<th>Referenced IIN (IN)</th>
<th>NAICS (Code)</th>
<th>Vendor City</th>
<th>Vendor State</th>
<th>Vendor ZIP</th>
<th>Global Vendor Name</th>
<th>Global DUNS Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1454 (10)</td>
<td>TELOS CORPORATION</td>
<td>DEPT OF THE ARMY</td>
<td>DELIVERY ORDER</td>
<td>Dec 01, 2013</td>
<td>0301110001</td>
<td>5416101</td>
<td>ARLINGTON</td>
<td>VA</td>
<td>20112986</td>
<td>TELOS CORPORATION</td>
<td>056260021</td>
</tr>
<tr>
<td>1488 (50)</td>
<td>LOCKHEED MARTIN INTEGRATED SYSTEMS, INC</td>
<td>DEPT OF THE ARMY</td>
<td>DELIVERY ORDER</td>
<td>Mar 10, 2011</td>
<td>WCR000220001</td>
<td>5416101</td>
<td>ARLINGTON</td>
<td>VA</td>
<td>20112986</td>
<td>LOCKHEED MARTIN CORPORATION</td>
<td>834861681</td>
</tr>
</tbody>
</table>

YOUR TURN! (LIVE DEMO)
THANK YOU FOR YOUR TIME TODAY

ANY QUESTIONS?????
RECENT AND PENDING SMALL BUSINESS REGULATIONS
May 23, 2013

Richard B. Oliver, Esq.
McKenna, Long & Aldridge LLP
roliver@mckennalong.com
RECENT AND PENDING SMALL BUSINESS REGULATIONS

I. Small Business Jobs Act of 2010 – Pending Regulations

II. Accelerated Payments to Small Business Subcontractors

RECENT AND PENDING SMALL BUSINESS REGULATIONS

I. SB JOBS ACT OF 2010 – PROPOSED REGULATIONS
   A. SB Subcontracting Protections
   B. SB Certifications
   C. Multiple Award Contracts and Contract Bundling
   D. Pending Regulations To Be Proposed
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS

A. SB Subcontracting Protections - Published October 5, 2011, 76 Fed. Reg. 61626-32

- Purpose
  - Protect workshare
  - Ensure payment

- Applies to “covered contracts” per FAR 52.219-9
  - $1.5 million for construction contracts
  - $650,000 for supply and service contracts
A. SB Subcontracting Protections (cont’d)

- Prime must provide notice and written explanation when it does not award to SB subcontractor “used” in its proposal
  - SB referenced in proposal
  - SB executed teaming agreement
  - SB drafted portion of proposal or submitted prices or technical information for proposal

- Prime must provide notice and written explanation whenever it
  - Reduces payment to SB subcontractor, or
  - Payments are more than 90 days past due
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS

A. SB Subcontracting Protections (cont’d)

- Prime must provide notice and written explanation whenever it (cont’d)
  - Contracting officer must timely review prime’s Subcontracting Report
  - Contracting officer must evaluate prime’s explanations
  - If contracting officer determines prime has history of unjustified untimely payments (3 incidents within 12 month period), must record prime in Federal Awardee Performance and Integrity Information System (FAPIIS)
  - Agencies may use subcontractor payment history as part of past performance evaluation
- Comments are closed, awaiting final rule
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS

B. SB Certifications - Published October 7, 2011, 76 Fed. Reg. 62313-21

- Purpose - Prevent large businesses from performing SB set-aside contracts
- Presumption of loss from misrepresentation is “value received”
- Broad definition of affirmative, willful, and intentional certifications
  - Submission of proposal for set-aside acquisition
  - Submission of proposal that encourages agency to classify as SB award
  - Registration of any federal electronic database for purpose of consideration for contract
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS

B. SB Certifications (cont’d)

• Does not apply to unintentional errors
• Concern must certify on ORCA annually
• To enter 8(a) and HUBZone SBC programs, a concern must be small
  ➢ Date of application, and
  ➢ Date program office requests formal size determination
• Comments are closed, awaiting final rule
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS


• Purpose
  ➢ Encourage use of SB concerns in multiple award contracts
  ➢ Discourage contract bundling and consolidation

• For following Multiple Award Contracts, contracting officers are required to consider the use of small businesses set-asides and reserves
  ➢ Federal Supply Schedule contracts
  ➢ Other Multiple Award Contracts issued or authorized by GSA
  ➢ Multiple award task or delivery order contracts per FAR 16.5
  ➢ Other IDIQ contracts entered into with two or more sources pursuant to same solicitation
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS

C. Multiple Award Contracts and Contract Bundling (cont’d)

• Use of SB set-asides and reserves
  ➢ Set-aside one or more Multiple Award Contracts for SBs
  ➢ Set-aside certain task or delivery orders under MAC for SBs
  ➢ Reserve Multiple Award Contracts for SBs
  ➢ Such procurement actions either for SB or a SB category
  ➢ If contracting officer decides not to use a set-aside or reserve, must explain and document decision in contract file
  ➢ Expect protests challenging contracting officer’s decisions not to set-aside or reserve
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS

C. Multiple Award Contracts and Contract Bundling (cont’d)

• Change to Multiple NAICS Codes for Multiple Award Contracts
  ➢ Currently for Multiple Award Contracts, contracting officers assign NAICS code that represents greatest portion of work
  ➢ Contracting officers could propose multiple NAICS codes and size standards for Multiple Award Contracts
  ➢ Contracting officer would identify which NAICS code applies to each portion of the solicitation requirement
  ➢ Contracting officer must assign appropriate single NAICS code for each task or delivery order
C. Multiple Award Contracts and Contract Bundling (cont’d)

• Contract Bundling and Consolidation

• Bundled contract is a consolidated contract where the combined requirements were or could have been performed by SBs

• No consolidated acquisition unless senior procurement executive or chief acquisition officer
  - Identified negative impacts on SBs
  - Justifies consolidation by showing benefits substantially exceed the benefits of each alternate approach that involves less consolidation

• For bundling, agencies encouraged to post list of bundled contracts and rationales for bundling before soliciting offers
C. Multiple Award Contracts and Contract Bundling (cont’d)

• Solicitations for bundled Multiple Award Contracts above $2 million must request offers from SBs, teams of SBs, and SB joint ventures

• SB Teaming Arrangements exempt from affiliation rules

• Other revisions
  ➢ After merger or acquisition, clarify that both acquiring and acquired entities must recertify size status
  ➢ Authorize set-asides for blanket purchase agreements

• Comments closed, awaiting final rule
SB JOBS ACT OF 2010 – PROPOSED REGULATIONS

D. Pending Regulations To Be Proposed

• Mentor-Protégé Programs Authorized
  ➢ SDVO SBCs
  ➢ WOSBCs
  ➢ HUBZone SBCs
RECENT AND PENDING SMALL BUSINESS REGULATIONS

II. Accelerated Payments to Small Business Subcontractors

A. OMB Policy to Accelerate Payment

B. DoD FAR Deviation
   • DoD Systems providing accelerated payments include:

<table>
<thead>
<tr>
<th>Enterprise Business System (EBS)</th>
<th>Financial Accounting and Budget System (FABS)</th>
<th>Transportation Financial Management System (TFMS)</th>
<th>Fuels Automated System (FAS)</th>
</tr>
</thead>
</table>

A. Authorizes Small Business Mentor/Protégé Program  
B. Changes Calculation for Subcontracting Limits  
C. Removes Dollar Limits for WOSBC Set-Aside  
D. Small Business Ombudsman at DCAA
SB Acquisition Provisions in 2013 NDAA

A. Small Business Mentor/Protégé Program

• Applies to all small businesses
• Program to be identical to 8(a) mentor/protégé program
• Great advantages to program
  ➢ Multiple bids as joint venture
  ➢ Mentor may own 40% of protégé
• SBA regulations within 270 days
SB Acquisition Provisions in 2013 NDAA

B. NDAA Change Calculation of Subcontracting Limits

• Purpose
• Current rule – 50 percent of incurred labor costs
• Problem with current rule
• New rule – subcontracts not exceed 50 percent of contract price
• SBA to develop construction contract subcontracting limits after public comment and formal rulemaking
SB Acquisition Provisions in 2013 NDAA

C. NDAA Removes Dollar Limits for Women-Owned SBC

- WOSBC set-asides allowed for 83 NAICS codes
- Previous law permitted set-asides only for contracts < $6.5 million for manufacturing and < $4.0 million for other contracts
- NDAA deletes these dollar limitations
- SBA issued interim final rule on May 7, 2013
SB Acquisition Provisions in 2013 NDAA

D. NDAA Creates Small Business Ombudsman at DCAA

- Advise on SB policy issues
- Primary point of contact and source of information for SB
- Collect and monitor data re: DCAA timeliness and responsiveness
- No involvement in ongoing DCAA audits
QUESTIONS

Society of
SAME
American Military Engineers