



# Procurement Alert Notice

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## PRESIDENT’S MESSAGE: WHAT’S OUR DIRECTION FOR 2009?

I would like to wish all of our PAN readers a Happy New Year. I hope you had a very nice holiday. The last few months have been hectic, especially those who invest in the stock market. But for us at BMRA, we will continue teaching and producing courses, and, from time to time, discussing various aspects of our profession.

Considering the downturn in the world economy, in 2009 it will be more important than ever that Government acquisition/procurement personnel be aware of rules and regulations that govern their performance in buying supplies and services to support their government agencies. They must buy at fair and reasonable prices and in accordance with the myriad of rules and regulations that pertain to their individual organizations. Although there are many similarities among agencies, there are major differences in the roles of contracting or procurement personnel. This is where BMRA can play an important role in offering professional continuing education.

The American Society for Training and Development (ASTD) is the world’s largest association dedicated to workplace learning and performance professionals. The December issue of *ASTD Magazine* reported an estimated \$134.39 billion was spent in 2007 on employee learning and development in the U.S.

Considering these statistics, it is obvious there is a need for organizations such as BMRA to be involved in the continuing education business and a market for its programs.

Organizations such as ours have played an important part in workforce development. BMRA has nearly 36 years of experience in providing professional continuing education related to the Acquisition field.

Although Professional Continuing Education is important to businesses in our economy, we at BMRA have elected to focus on what I believe is an important specialty—government acquisition or, as some government organizations outside the federal community refer to it, “procurement”.

Requirements and rules differing among agencies are not always taught. Because of their different missions, agencies have developed their own rules and regulations to support their purchasing requirements. This provides the firms in the private sector with an excellent opportunity to sell specialized courses to the various agencies.

While marketing is not our primary function at BMRA, it is a very important to our business. This is especially true if we want companies or agencies to come to us for continuing education. We can provide the necessary professional education and training that

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is required by the various agencies at a price that is fair and reasonable and at the same time provide other benefits such as Continuing Education Units (CEUs). Marketing will become one of our main objectives in 2009.

Who then should do the marketing? I believe that marketing should be the responsibility of everyone associated with BMRA. Our courses contain highly professional content and meet the needs of those who attend them. Our faculty members are very professional and have excellent classroom performance. I encourage all of our faculty members to become acquainted with the courses that we offer and to tell the student attendees about our offerings and to contact us.

Remember we specialize in instructing agencies and provide classroom instruction to those agencies. As a rule, BMRA does not offer classes to individuals who sign up for a particular course. I urge everyone to contact our Course Administrator Jennifer Ashburn, if you need further information about our courses.

*John Lynch*  
President

### **BMRA'S EXECUTIVE VICE PRESIDENT WILL RETURN TO DEPARTMENT OF STATE**

Mary Ackerman, our Executive Vice President and Vice President for Education will be leaving BMRA in January 2009, to return to the Department of State. Mary has been with BMRA for five years and we will sadly miss her wisdom and counsel as she moves on to greater challenges at State. On behalf of all the staff, faculty, and associates at BMRA, I wish Mary the best of success in her future endeavors.

### **RICHARD PANSELL NAMED NEW VP FOR EDUCATION AND TRAINING**

On January 8, Richard Pannell became the new Vice President of Education and Training for BMRA. He replaces Mary Ackerman who will be leaving the firm on January 19.

Richard has more than 20 years of professional experience in the financial and contracting fields, with extensive experience in cost and price analysis.

Richard has been a Senior Associate of BMRA since 2005 and has taught many classes for BMRA since joining the firm.

Along with his VP duties he will continue being a course instructor, and plans on teaching six to seven courses per year.

I encourage all of our faculty members to give Richard a call and welcome him to the BMRA family. We plan to continue our in-service training program this August and those attending can meet Richard, if they haven't met him before then.

### **HUBZONE FIRMS GET SET-ASIDES PREFERENCE**

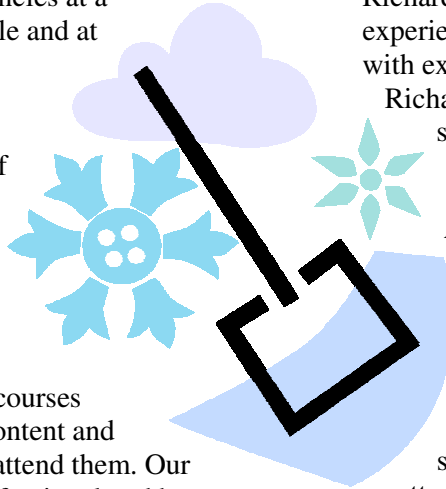
International Program Group, Inc. (IPG), a Historically Underutilized Business Zone (HUBZone) small business, protested the decision of the United States Marine Corps (USMC)—

- To issue order No. M00681-08-P-0296 on a sole-source basis to Veteran Government Services (VGS), a service-disabled veteran-owned small business concern (SDVOSBC), and
- To set aside for competition restricted to SDVOSBCs solicitation No. M00681-08-T-0101.

Both the order and the pending solicitation were for support services for pre-deployment training exercises.

Given the unambiguous language of the applicable statutes regarding the Historically Underutilized Business Zone (HUBZone) and service-disabled veteran-owned small business concern (SDVOSBC) programs, contracting agency, before proceeding with an SDVOSBC set-aside, must first reasonably consider whether the conditions for a HUBZone set-aside exist, and, if they do, agency must proceed with a HUBZone set-aside.

Protests challenging agency's decision to acquire services through SDVOSBC set-asides are sustained where the agency failed to reasonably consider the possibility of a HUBZone small business set-aside,



by failing to make a reasonable inquiry into the availability of HUBZone small businesses.

### **3% WITHHOLDING RULE PROPOSED**

On December 5<sup>th</sup>, the Internal Revenue Service (IRS) published<sup>1</sup> a proposed rule to implement a provision enacted as section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222.

The proposed regulations reflect changes in the law that require Federal, State, and local government entities to withhold a 3% income tax when making payments to persons providing property or services.

The proposed regulations would apply to all payments of \$10,000 or more for products and services purchased by the federal, state, and local governments with expenditures of \$100 million or more.

Various organizations are working to repeal this law, including the Professional Services Council (PSC)<sup>2</sup>. PSC is asking for comments from firms and individuals. If you wish to comment, contact Alan Chvotkin at [chvotkin@pscouncil.org](mailto:chvotkin@pscouncil.org) or call him at 703-875-8059.



### **FAR CHANGES**

#### **FAC 2005-28 – Contractor Business Ethics Compliance Program and Disclosure Requirements**

Effective December 12, 2008

This final rule amends the Federal Acquisition Regulation (FAR) to amplify the requirements for a contractor to have a code of business ethics and

<sup>1</sup> Federal Register / Vol. 73, No. 235 / Friday, December 5, 2008 / Proposed Rules

<sup>2</sup> The Professional Services Council (PSC) is the national trade association of the government professional and technical services industry. In 2008, PSC and the Contract Services Association of America (CSA) merged to create a single, unified voice representing the full range and diversity of the government services sector.

conduct and an internal control system; and to disclose to the Government certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments. The rule provides for the suspension or debarment of a contractor for knowingly failing to disclose promptly (in writing) to the agency Office of the Inspector General certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments.

#### **FAC 2005-29 – Employment Eligibility Verification**

Effective Jan. 15, 2009

This final rule inserts a clause into Federal contracts that are above the simplified acquisition threshold and have a performance period of at least 120 days, committing Government contractors to use the U.S. Citizenship and Immigration Services' E-Verify System to verify that all of the contractors' new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States.

Exemptions include contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications. The final rule requires prime contractors to include the clause in subcontracts over \$3,000 for services or for construction.

In exceptional circumstances, a head of the contracting activity, without power of redelegation, is authorized to waive the requirement to include the clause. In response to public comments, the final rule significantly extends the timelines for registering, beginning to use the system for new and existing employees, and using the program to initiate verification of new hires.

Applicability to certain entities was limited in the following ways:

- Institutions of higher education need only verify employees assigned to a covered Federal contract.
- State and local governments and Federally Recognized Indian Tribes need only verify employees assigned to a covered Federal contract.



- Sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

In addition, the final rule exempts from verification requirements (a) employees who hold an active security clearance of confidential, secret, or top secret and (b) employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD) -12. Contractors concerned with costs associated with identifying and separating existing employees assigned to a Federal contract, for the purpose of E-Verify, are provided the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract.



**BUSINESS MANAGEMENT RESEARCH ASSOCIATES, INC.**  
3949 Pender Drive, Suite 300  
Fairfax, VA 22030-6044

