



Procurement Alert Notice

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PRESIDENT’S MESSAGE: CHANGES

When I returned from my vacation in late March, once again I realized how many changes can take place in the Federal Acquisition environment in only a few weeks. In such a rapidly changing environment, we at BMRA face the continuing challenge of keeping our courses and materials current for both our instructors and our students.



Back in the ‘70s and early ‘80s, we often used errata sheets to keep people current. We started the Procurement Alert Notices (PANs) over ten years ago to keep our associates informed of what is happening in the contracting/acquisition community.

Rapid and continuing advances in computer technology since the 1980s have created an environment where information is almost instantly available online: changes that we get from the FAR Council through the FACs are constantly updated; the GAO decisions posted on the web are only a few days old; and the bills in the hopper on the hill are easily accessible through the computer.

This means that the students who come to our classrooms expect the most current information and our instructors need to be prepared to discuss this information with the students. Having the most current information available has become a real challenge.



The recent passage of the Accountability in Contracting Act (H.R. 1362) by the House of Representatives is one such development that instructors and students alike need to be familiar with. This legislation, reported by the Oversight and Armed Services Committees, changes Federal acquisition law to require agencies to limit the use of abuse-prone contracts, to increase transparency and accountability in Federal contracting, and to protect the integrity of the acquisition workforce. The areas of the legislation that this bill addresses include—

1. Limiting the length of noncompetitive contracts;
2. Minimizing no-bid contracts;
3. Minimizing cost-plus contracts;
4. Public disclosure of justifications for no-bid contracts;
5. Disclosing contractor overcharges;
6. Funding contract oversight; and
7. Closing the revolving door.

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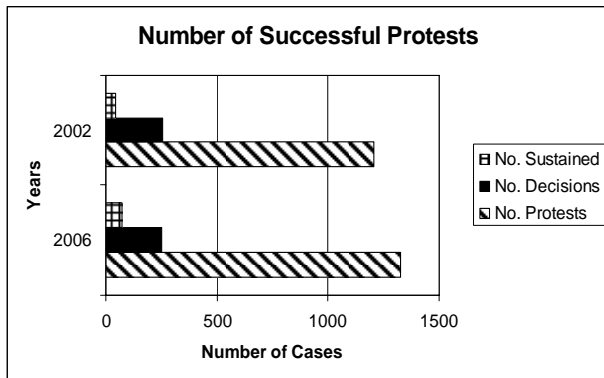


Many of these concerns have been the result of contracting actions related to the war in the Middle East. If and when the final bill is passed, many of us in the acquisition community will face changes and we must be prepared.

I encourage all of you to stay current on pending legislation and to express your thoughts to your representatives in Congress.

John Lynch
President

**NOTES FROM THE VICE PRESIDENT:
MORE PROTESTS SUSTAINED**



See: <http://www.gao.gov/special.pubs/bidpro06.pdf>

While the number of protests filed with the GAO has increased slightly over recent years, the percentage of cases where the decision went in favor of the protestor has increased more significantly. In a November 2006 report to Congress, the GAO reported that 1,204 cases were filed with the Office in FY 2002. Out of the 256 decisions, 41 (16%) went in favor of the protestor. In comparison, the number of protests filed in FY 2006 was 1,327 and—although the number of decisions was roughly the same (249)—72 (29%) were sustained.

There are a number of explanations for the trend. One factor is the generally increasing length and dollar value of contracts. The cost of developing proposals for such “mega-contract” procurements is enormous and losing could mean missing out on years of work and billions of dollars. In short, the price of losing is higher than ever. Yet, even in this winner-take-all environment, there are powerful disincentives to filing protests, especially for small businesses: costs of protesting, in dollars and

“goodwill,” are severe and the process is notoriously biased against the contractor. A company is not likely to file a protest unless it is very confident that it can prove its case.

Another factor lies in the state of the procurement workforce. Retiring “Baby Boomers” have not been replaced by personnel equal in number or skills. Add increasingly complex procedures and explosive growth in the amount of money to be spent, and the stage has been set for serious problems. When those problems become evident, an important part of the solution will be training, and instructors will always be indispensable to that training. Come to BMRA’s In-service training program August 11 and let’s talk about getting ready to provide these solutions.

Mary Ackerman
Vice President

IN-SERVICE TRAINING AUGUST 11TH

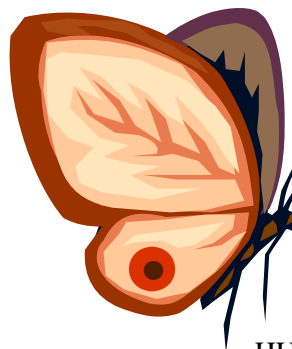
BMRA’s 2007 in-service acquisition training will be held August 11th, from 8:30 am to 4:30 pm. Representatives from Government and industry will discuss issues and trends in the education and training of acquisition personnel. Lunch will be provided.

We will send out more specific information as it becomes available. Make plans now to attend!

GAO SUSTAINS SDVOSBC’S PROTEST

On March 28, 2007 the GAO rendered decision B-299291 on the matter of MCS Portable Restroom Service (MCS), a service-disabled veteran-owned small business concern (SDVOSBC).

MCS protested the Air Force’s decision not to set-aside for SDVOSBC’s a requirement for portable chemical toilet services, and instead to obtain these services from a small business set-aside under invitation for bids (IFB).



The contracting officer’s market research indicated that she did not have a reasonable expectation of receiving two or more bids from HUBZone or SDVOSBC concerns.



Based on this determination and after receiving approval from the Air Force small business specialist, she posted on FedBizOpps a synopsis of the proposed solicitation as a small business set-aside.

The contracting officer followed FAR Subpart 19.14, which in part provides—

- (a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to [SDVOSBCs] when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider [SDVOSBC] set-asides before considering [SDVOSBC] sole source awards....
- (b) To set aside an acquisition for competition restricted to [SDVOSBCs], the contracting officer must have a reasonable expectation that—
 - (1) Offers will be received from two or more [SDVOSBCs]; and
 - (2) Award will be made at a fair market price.

An SBA regulation also provides that the contracting officer should consider setting aside the requirement for 8(a), HUBZone, or SDVOSBC participation before considering setting aside the requirement as a small business set-aside.

The GAO recommended that the contracting officer conduct additional market research to ascertain the interest and capability of SDVOSBCs for this effort and determine whether this acquisition should be set-aside for SDVOSBCs. In the event the agency determines that there is not a reasonable expectation of receiving bids from two or more SDVOSBCs, then the agency should consider whether to issue a sole source SDVOSBC award. The GAO also recommended that MCS be reimbursed the reasonable costs of filing and pursuing the protest.

In rendering its decision the GAO made three points.

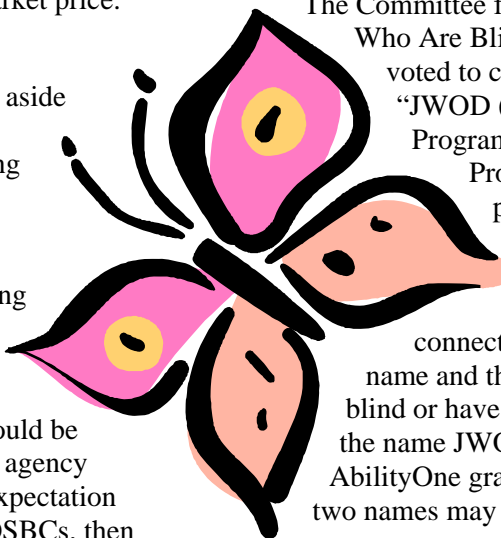
- (1) The agency failed to seek the advice of an SBA representative on whether to set aside the procurement for SDVOSBCs, consulting only

with the Air Force small business specialist. Furthermore, as evidence that this procurement may have been appropriate for an SDVOSBC set-aside, the SBA noted that another Air Force base in Colorado successfully issued a solicitation as an SDVOSBC set-aside for the same or similar services.

- (2) The remaining statutory requirements for making a sole-source award to an SDVOSBC are not relevant here.
- (3) The GAO recognized that the plain wording of FAR sect.19.1406 is potentially at odds with that of the Act and the SBA regulations. The GAO advised the FAR Council of the possible inconsistency in language with the applicable statute so that the Council may review the matter.

You may read more about this case by going to www.gao.gov/decisions.

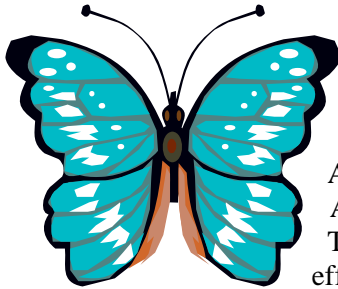
JWOD NAME TO CHANGE



The Committee for Purchases from People Who Are Blind or Severely Disabled has voted to change the name of the “JWOD (Javits-Wagner-O’Day) Program” to the “AbilityOne Program”. The name of the program is being changed to give a stronger, more unified identity to the program and to show a connection between the program name and the abilities of those who are blind or have severe disabilities. Use of the name JWOD will be transitioned to AbilityOne gradually. During transition, the two names may be used synonymously.

The AbilityOne Program creates jobs and training opportunities for people who are blind or who have other severe disabilities, empowering them to lead more productive and independent lives. Its primary means of doing so is by requiring Government agencies to purchase selected products and services from nonprofit organizations employing such individuals.

NEW CAO AT GSA



The GSA Administrator, Lurita Doan, announced that Molly Wilkinson is the new General Services Administration's Chief Acquisition Officer (CAO). The appointment was effective March 5, 2007. Ms.

Wilkinson replaces Emily Murphy, who left GSA to return to the private sector. Before joining GSA, Ms. Wilkinson was the Department of Labor's Associate Deputy Secretary for Management.

The CAO is responsible for developing and reviewing acquisition policies, procedures, and related training for GSA Federal acquisition professionals.

EARNED VALUE MANAGEMENT

Earned Value Management (EVM) is a current topic of interest. Used properly, EVM is a good management tool that has become an important solution to management of some large programs in Government and industry.

What is EVM? Around 1967, DoD introduced Cost/Schedule Control Systems Criteria (CS2), which can be considered the forerunner of EVM. CS2 was a tool to measure the value of work performed as compared to the actual costs, a concept referred to as "earned value." A GAO report issued in 1997 explained that earned value goes beyond the two-dimensional approach of comparing budgeted costs to actuals. It attempts to compare the value of work accomplished during a given period with the work scheduled for that period. By using the value of work done as a basis for estimating the cost and time to complete, the earned value concept can alert program managers to potential problems sooner than expenditures alone can. Thus the concept of EVM evolved. The GAO has recognized Earned Value as a sound way to measure progress on major acquisition programs.

There are some criticisms of EVM. Perhaps the biggest complaint is related to the timeliness of reports. If information is old, the reports generated by EVM do not function as an early warning system.

The key to successful EVM programs is having simple reporting systems that measure those important elements or tasks that influence a project; the reporting system should not be too complex.

Another concern is that EVM is expensive. Unless a program is very complex or in the multi-million dollar category, it probably should not be used.

Thus, EVM can assist project/program managers in government and industry by providing a vehicle for assessing performance, comparing costs, and determining accountability. Although BMRA does not offer an EVM course, many instructors have expressed an interest in it.

SOMETHING TO THINK ABOUT?

We at BMRA have discussed the impact of distance learning (or e-learning) on education and have come up with mixed reviews. Two areas that everyone seems to agree on are: distance learning is costly to develop, much more costly than developing classroom courses; and the interactive process among those enrolled is essential if the students are to meet the learning objectives of the course.

The cost of developing distance learning is extremely important, but effectiveness is also of concern. Distance learning applications are being used in many disciplines, and Government contracting is definitely one of them, but no one has sufficiently compared the results of technology-based distance learning with those of traditional classroom methods. The questions that need to be answered are: Are learning objectives being achieved? Are we improving the ability of the workforce to contract?

There have been attempts to answer these questions, but to the best of my knowledge nobody has shown whether investing in distance learning vs. the traditional classroom is a better and more economical approach to learning. E-learning or distance learning does have its advantages and would be most useful in countries where individuals have access to computers, but not in less developed countries.

I believe we need more information to determine whether the cost of distance



learning is worthwhile. We need to evaluate the results and compare that to its cost to determine whether it's worth the money.



FAR CHANGES

FAC 2005-15 Summaries

Item I—Payments Under Time-and-Materials and Labor-Hour Contracts

This final rule revises and clarifies policies related to award and administration of noncommercial item Time-and-Materials (T&M) and Labor-Hour (LH) contracts and the policies regarding payments made under those contracts. The objectives of the changes are to ensure fair and reasonable prices under T&M and LH contracts and to eliminate confusion related to payment amounts for subcontractor provided labor.

Item II—Additional Commercial Contract Types

This final rule expressly authorizes use of Time-and-Materials (T&M) and Labor-Hour (LH) contracts for commercial services under specified conditions.

FAC 2005-16 Summaries

Item I—Implementation of Wage Determinations On-Line (WDOL)

This final rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) Internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website. The WDOL and e98 processes replace the paper Standard Forms 98 and 98a.

Item II—Termination or Cancellation of Purchase Orders

The rule revises the FAR to correct the inadvertent omission of an appropriate reference. It is not a change to the contract termination options available. If a purchase order that has been accepted in writing by the contractor is to be terminated, contracting

officers have the option to terminate for cause as well as terminate for convenience.

Item III—Contracts with Religious Entities

This interim rule permits religious entities to consider employment of individuals of a particular religion to perform work connected with carrying on the entity's activities. Religious entities remain subject to other Equal Employment Opportunity requirements.

Item IV—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items

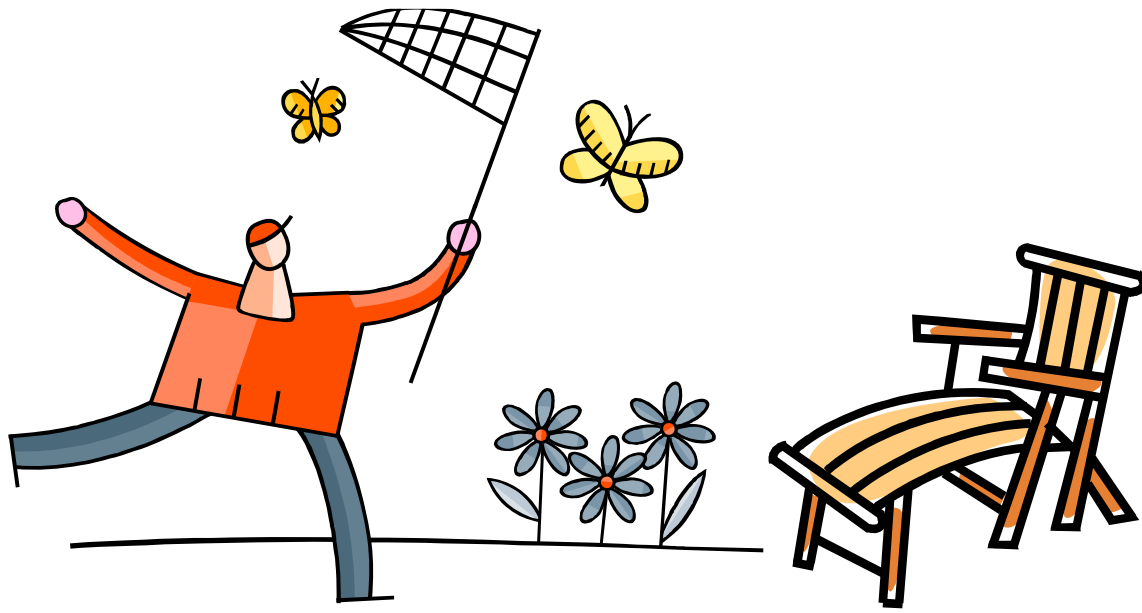
The final rule revises the Federal Acquisition Regulation (FAR) to update the required contract clauses that implement provisions of law or executive orders for acquisitions of commercial items.

FAC 2005-17 Summary

Government Property

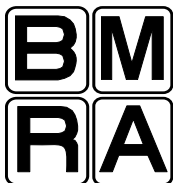
This final rule simplifies procedures, clarifies language, and eliminates obsolete requirements related to the management and disposition of Government property in the possession of contractors by moving, clarifying, and deleting definitions; establishing a life-cycle approach to property management; and sanctioning the use of consensus standards and/or industry-leading standards and practices for property management. This rule deletes outdated clauses, combines selected FAR property clauses into a single clause, and implements a new clause designed for military base and installation-level contracts awarded under the OMB Circular A-76 process. FAR language and associated clauses for special tooling, special test equipment, and facilities contracts is deleted.





In-service Training 2007—AUGUST 11th

CATCH IT!



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