

Office of Advocacy

Good afternoon, Chairman Talent and members of the Small Business Committee. I am Jere Glover, the Chief Counsel for Advocacy at the U.S. Small Business Administration. With me this afternoon is Jim O'Connor, the Assistant Advocate for Procurement Policy.

I am pleased to appear before the committee and I thank you for the opportunity to share the views of the Office of Advocacy regarding the impact of certain proposed procurement policies on small business.

When Congress created the Office of Advocacy, it charged it with the responsibility for analyzing the contributions small business makes to the economy. This mandate was recognition by this body of the importance of a viable small business sector to competition - competition in price, quality and innovation. This concept underlies much of national policy and is the foundation of many of the government's programs.

A good example of this is a recent contract awarded by NASA. Two weeks ago, NASA awarded a \$33.4 million, five year contract to four companies to build the Hyper-X hypersonic test aircraft. The thrilling aspect of this award is that three of the four firms are small businesses, actively involved in the Small Business Innovation and Research (SBIR) program. In fact, one of the small businesses originated the project with SBIR funding.

Small businesses and competition are the backbone of our market economy. I am worried, however, that some recent procurement changes do not reflect the nation's commitment to small businesses and competition. In fact, my fears were echoed in a feature story the Washington Post did on procurement reform several weeks ago. The story examined how procurement reforms are redirecting the flow of federal dollars and concluded that large firms will benefit more from procurement reform than small firms. I am genuinely concerned about the future of thousands of small business vendors.

Major procurement reforms, during the last couple of years, have significantly changed how the government does business. The Federal Acquisition Reform Act (FARA) and the Federal Acquisition Streamlining Act (FASA), have had and will continue to have an unprecedented impact on the federal procurement process.

The stated objectives of these reforms are 1) to make the government operate more like a commercial buyer and 2) to make it easier and more appealing for businesses to participate in government markets.

The Office of Advocacy is a strong proponent for procurement reforms and believes in an efficient government, as long as the reforms continue to promote vigorous competition and recognize the significant role federal procurement dollars play in shaping the total economy. We are concerned that the pendulum may be swinging too far from the center and that efforts to streamline government procurement processes are over-shadowing the importance of making procurement decisions that promote a strong and diverse small business vendor base.

n our zeal to streamline government processes, we must be ever mindful of the contributions that small firms make to the U.S. economy-generating competition, lowering overall costs, creating innovations and providing more jobs than any other sector.

Is this in the forefront of our procurement policies? I have my doubts.

Last year, five government prime contractors, together, did more business with the government than all small businesses combined. In fact, a single large government contractor received more federal prime contract dollars in FY '96 than all small disadvantaged businesses and about five times as much as was received by all women-owned businesses for the same period.

Large businesses represent less than five percent of all businesses, yet, consistently receive almost eighty percent of all federal prime contract dollars.

It is easy -- and arguably more efficient in the short term -- for the government to contract with a cadre of mostly large firms. In the process, however, the fate of many small firms, the entrepreneurial base of the economy and the future of competition are jeopardized.

The "BUZZ words" in procurement circles today -- Multiple Award Schedules; Indefinite Delivery Indefinite Quantity (IDIQ) Contracts; Blanket Purchase Agreements; and Government Wide Acquisition Contracts (GWAC) - tell the real story about procurement reform. They represent the latest and most popular contracting vehicles -all of which - encourage contract consolidations, centralized administration and long-term vendor agreements with fewer and larger businesses. It is much easier today to add a task to an existing contract vehicle than to compete it.

These efficiency vehicles streamline the procurement process, but stifle the development and growth of many small business vendors, especially emerging, minority and women-owned firms.

The small business community is - and should be -- concerned when competition is eroded; when regulations favor big business; when small business goals have little meaning; or, when the convenience of a contracting officer is more important than building a sound and diverse base of government vendors.

I am not in any way suggesting that procurement reform be stopped. I am suggesting that our approach focus more on long-term implications and the importance of promoting open and vigorous competition in federal markets. I believe we are on the right track, but corrections are needed to ensure that federal dollars are not promoting economic concentration at the expense of harming the source of competition, namely, small business.

Increasing procurement opportunities for small businesses was a major issue raised at the 1995 White House Conference on Small Business. Seven of the top sixty recommendations submitted to the President and the Congress focused on expanding the small business share of federal procurement markets.

The proposed re-write of FAR Part 15 implements major changes in how the government negotiates contracts.

Although Advocacy supports the intent of the rule, we share the concerns expressed by many small business groups. We believe the proposal will limit competition by giving the

contracting officer significant authority to eliminate offerors prematurely -- for reasons of convenience. In theory, limiting the competitive range to promote government and offeror efficiency sounds great. But, in the real world -- where contracting officers have concurrent buying actions on-going and are under significant pressure to do more with less -- we believe the rule will give government contracting officials license and incentive to focus on the fewest number of offerors that are the best known or who represent the most recognized brand name.

Advocacy is particularly concerned that new government vendors, emerging firms and other small businesses, less polished in marketing or proposal writing skills, will be quickly eliminated from a competition.

Advocacy believes competition will be limited because provisions in the proposed rule:

- Do not define what is meant by an "efficient competition," giving the contracting officer significant latitude to interpret "efficiency" as "convenience."
- Allow a contracting officer to determine the number of offerors to be considered in a competitive range before the submission of offers;
- Do not require a minimum number of offerors to be considered in the competitive range;
- Leave open to the judgment of the contracting officer the method or reasons for eliminating a potential offeror from the competitive range; and,
- Provide no protections for small firms in "down-selects."

In our opinion, the proposal represents a dilution of the practice of "full and open competition."

In formal regulatory comments submitted to the FAR Council, Advocacy suggested a number of alternatives and amendments to the proposal. Copies of our comments are included for the record.

Advocacy is further concerned that the regulatory analyses prepared for the proposed FAR Part 15 rule and a supporting proposed rule on competitive range determinations are deficient and flawed. Advocacy's August 27, 1996 comments to the FAR Council stated that the initial regulatory flexibility analysis, "didn't even begin to quantify impact on small business."

The initial regulatory analyses on both rules suggested the proposals will benefit small firms, yet provided no supporting information or quantification data measuring impact. Why historical data on contracting with small businesses was not analyzed and included in the analysis is a mystery, if indeed the FAR Council based its conclusions on factual data indicating a problem will be solved by the proposed revisions. As a result, Advocacy and numerous small business groups believe the requirements of the Regulatory Flexibility Act have been skirted, with insufficient analyses provided to support speculative conclusions. The concerns of the small business community should be factored into a properly prepared initial regulatory flexibility analysis, when the FAR Part 15 proposal is re-published. I understand the proposal will be re-published later this month.

In addition, Advocacy believes the proposed rule should be considered a major rule, subject to Office of Management and Budget (OMB) review under Executive Order 12866. This review would require an economic analysis of the rule's impact on the overall economy.

In closing, many positive procurement reforms have been introduced by the Congress and the Administration during the last several years. These changes are important, but I believe jeopardized, if small business stakeholders are adversely and disproportionately impacted. I urge the Congress and the Administration to protect and develop a strong small business vendor base.

offer, for consideration, several suggestions that I believe will complement reform and increase procurement opportunities for small businesses:

- Define and restrict contract bundling so that small businesses are not adversely impacted from gross consolidations of agency requirements.
- Require, for certain prime contract solicitations above \$500,000, a significant evaluation factor that would measure an offeror's past and anticipated utilization (by committed contract dollars) of small business subcontractors.
- Require written justification by a contracting officer when substitutions are used for specific small businesses named in an offeror's proposal or subcontracting plan.
- Include the Small Business Administration as an advisory member to the FAR Council.

SBA is committed to increasing federal procurement opportunities for small businesses. We are currently working on a pilot to establish an Internet-based procurement information system and data base of small businesses. We anticipate the pilot to be announced in June, during Small Business Week, and we are confident the initiative will complement many procurement policy reforms.

Thank you for the opportunity to express Advocacy's views.

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