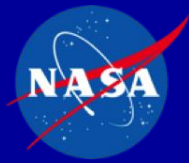


OSBP-HQ Update

Richard Mann

NASA Office of Small Business Programs (HQ)

September 29, 2022



SBA Proposed Rule

RIN 3245-AH70

**Ownership and Control and Contractual
Assistance Requirements for the 8(a)
Business Development Program**



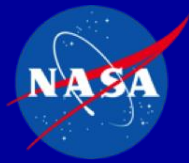
8(a)

- Most of the proposed Rule entails Ownership, Control, and Contractual Assistance requirements for the 8(a) program
- Can't combine 8(a) with other programs in one set-aside
- Rule also contains miscellaneous changes



Ostensible Subcontractor

- SBA OHA established four factors in *Size Appeal of Dover Staffing*
 - Proposed sub was the incumbent & ineligible to compete for procurement
 - Prime plans to hire majority of workforce from the sub
 - Prime's proposed mgt previously served with the sub on the incumbent contract
 - Prime lacks relevant experience and must rely on its sub to win the contract
- SBA proposes to add the last two factors to the ostensible subcontractor rule (Size Determinations)
- 13 CFR 121.103 (h)



Size Protests

- Size protests may only be filed against an apparent successful offeror or offeror in line for award
- 13 CFR 121.1004 (f)



NMR Rule – Contract Waivers

- For a multiple item procurement, a CO must specifically identify each item for which a waiver is sought
- Contract NMR waivers longer than 5 years would be prohibited
- Impact on SEWP (comment)
- 13 CFR 121.1203 and 121.1204



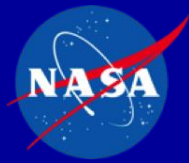
SDB Protest

- Procedure to protest status as SDB to be reinstated
- Not really required since there's no SDB set-aside
- SBA IG wants it there anyway
- 13 CFR 124.1002



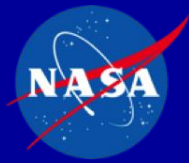
Consolidation & Bundling

- BPA's added to list of vehicles covered by C&B (driven by two GAO protests)
- “Requirements” include the combination of new and existing requirements into one larger procurement (comment)
- Price analysis is always required as part of the bundling justification (comment)
- 13 CFR 125.2 (d) (2) (ii)



Subcontracting

- A prime cannot count an award to a joint venture in which it is a partner as subcontracting credit
- Bank fees no longer excluded from subcontracting base
- Primes required to include indirect costs in their subcontracting plans
- 13 CFR 125.3



Limitation on Subcontracting

- Compliance on orders under multi-agency contracts should be measured by the ordering agency
- Contracting Officer must evaluate contractor's compliance with this requirement on its past performance evaluation or rating (comments)
- 13 CFR 125.6

Comment Period

- Rule was published on 09 September 2022
- Comment period ends 08 November 2022
- Comments, identified by RIN 3245-AH70, may be submitted through the *Federal eRulemaking Portal*: <https://www.regulations.gov> (follow the instructions for submitting comments).

H.R. 7694

Strengthening Subcontracting for Small Businesses Act of 2022

- Passed House in June; Referred to Senate Committee on Small Business and Entrepreneurship
- Would revise 15 U.S.C. 637(d)(4)(G) to require the following to be significant factors for purposes of evaluating offers for a contract that includes a subcontracting plan:

H.R. 7694

Strengthening Subcontracting for Small Businesses Act of 2022

- (i) A factor that is based on the description in the subcontracting plan of the extent to which the offeror proposes to use small business concerns as subcontractors (at any tier) in the performance of the contract
- (ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts
- This requirement already exists for bundled contracts; HR 7694 would extend to all contracts with a subcontracting plan
- NASA already has this requirement for Part 15 acquisitions

FY 2021 Subcontracting Metrics

CATEGORY	DOLLARS
TOTAL DOLLARS	\$9,440,941,009
SMALL BUSINESS	\$3,715,060,103
SDB	\$814,936,791
WOSB	\$847,646,261
HUBZone	\$250,543,151
VOSB	\$448,652,200
SDVOSB	\$291,596,771
HBCU/MSI	\$37,337,240

FY 2021 Subcontracting Metrics

