



Small Business is King

How NDAA 13 and 14 Have Shifted the Contracting Paradigm



PARADIGM
SHIFT

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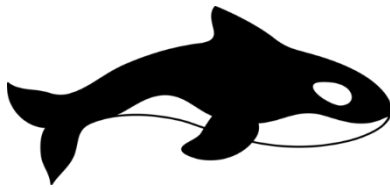
Part I: Fishing



Things You Need to Know to Get Started

- Registration Tasks

- ❖ SAM
- ❖ Email
- ❖ Cage Code
- ❖ Special Designations



- Sources of Help

- ❖ SBA Resource
- ❖ PTAC
- ❖ MBDA
- ❖ SCORE
- ❖ OSDBUs



How Does the Government Order Anything?

Vehicles – Need One?

- Purchase Orders (small purchases)
- Multi-award Schedules
 - ❖ MOBIS
 - ❖ GSA
 - ❖ Contracts
 - ❖ Indefinite Delivery/Indefinite Quantity

There is a schedule for everything

How to Get the Fish to Jump Into the Boat

- Why do I want to bite your hook?
- What is “*Your Company Here*” story?



Building Relationships

- Find out who the customers are:
 - ❖ PTAC
 - ❖ OSDBUs
 - They know who the customers are
 - ❖ Build relationship with that person
 - Learn what that person thinks is important



How to Reel In the Fish

- Respond to the requirements the customer wants:
 - ❖ Create themes
 - Your story
 - ❖ Create discriminators
 - Why you?
 - ❖ Be cost efficient
 - Critical



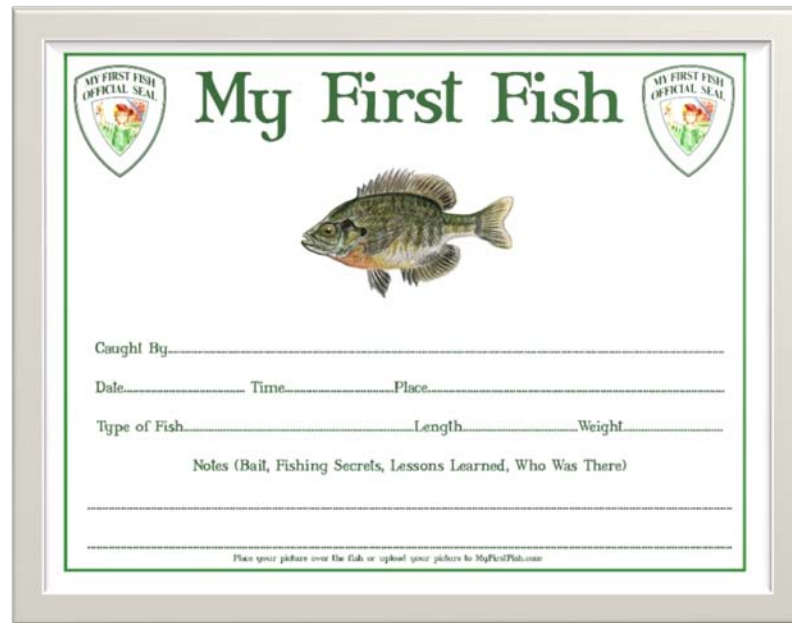
How to Reel in the Fish (cont'd)

- Be clear, concise and provide direct response to what is needed in evaluating the criteria
- Government sets aside 23% of work for small business.



Part II: Fishing License

- A cosmic shift is in progress: Recent legislation is closing loopholes and creating favorable conditions for small businesses to win more government work



Small Business Role in U.S. Economy

- In 2010, there were 27.9M small businesses vs. 18,500 firms with 500 employees or more

Small Businesses Comprise:

99.7% of U.S. employer firms

64% of net new private-sector jobs

49.2% of private-sector employment

42.9% of private-sector payroll

46% of private-sector output

43% of high-tech employment

98% of firms exporting goods

33% of exporting value

Small Business Procurement Scorecard

- SBA gives government-wide grade of “B”

Prime Contracting Achievement						
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Goal</u>	<u>2012 \$B</u>
Small Business	21.89%	22.66%	21.65%	22.25%	23.00%	\$ 89.9
WOSB	3.68%	4.04%	3.98%	4.00%	5.00%	\$ 16.2
SDB	7.57%	7.95%	7.67%	8.00%	5.00%	\$ 32.3
SDVOSB	1.98%	2.50%	2.65%	4.04%	3.00%	\$ 12.3
HUBZone	2.81%	2.77%	2.35%	2.01%	3.00%	\$ 8.1

Subcontracting Achievement					
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Goal</u>
Small Business	31.82%	35.40%	35.00%	33.60%	36.00%
WOSB	5.44%	6.20%	6.10%	5.60%	5.00%
SDB	4.49%	5.30%	5.40%	5.10%	5.00%
SDVOSB	1.29%	1.70%	2.10%	1.80%	3.00%
HUBZone	1.71%	2.00%	1.90%	1.30%	3.00%

- Biggest agency (DoD) also earns a B, with 20.4% of prime work going to SB and 35.5% of sub work
 - A+ performers: GSA and Department of Treasury
 - DoE (second biggest agency) earns an F

Small Business Jobs Act of 2010

- Goal: Stimulate small business sector to create jobs and assist in economic recovery
 - ❖ Put more capital in hands of entrepreneurs and SB owners
 - ❖ Strengthen ability of SB to compete for federal contracts
 - ❖ Promote SB exporting
 - ❖ Expand training and counseling
 - ❖ Provide tax relief



Small Business Jobs Act of 2010

Section 1322: Subcontracting Improvements

- Holds contractors accountable for subcontracting plans
 - ❖ Contractors must make “good faith effort” to employ the small businesses they used in proposal submission in same amount and quality of work
 - ❖ Provide KO written explanation if deviation
- Eliminates “bait and switch” tactics
- See [78 Fed. Reg. 42391](#), July 16, 2013

Small Business Jobs Act of 2010

Section 1331: Multiple Award Contract Set Asides

- SB set-asides allowed under multiple award contracts and GSA Schedules
- Make it more difficult for agencies to “bundle”
- See [76 Fed. Reg. 63542](#), October 13, 2011 and [78 Fed. Reg. 61114](#), October 2, 2013

Small Business Jobs Act of 2010

Section 1334: Payment of Subcontractors

- Primes must notify KOs in writing if payment to sub is reduced or more than 90 days past due if fed has paid the prime
- KOs must consider payment history when evaluating prime's past performance
- See [78 Fed. Reg. 42391](#), July 16, 2013



Small Business Jobs Act of 2010

Other Provisions

Section 1341: “Presumption of loss” if a contractor willfully misrepresents set-aside status

Section 1342: Annual certification of size and status required

Section 1344: SBA must review at least 1/3 of size standards every 18 months

Section 1347: Creates parity among all SB programs (removes preference for HUBZone concerns)

National Defense Authorization Act FY13

- Significant small business components reflect desire to increase training, transparency, and accountability



National Defense Authorization Act FY13

Section 1641: Mentor-Protégé Program

- Authorizes the SBA to establish program for all small businesses
- Functions identically to the program established for 8(a) companies



National Defense Authorization Act FY13

Section 1641: Mentor-Protégé Program (Cont'd)

- Advantages to Mentor-Protégé Program
 - ❖ Increases pool of available protégés
 - ❖ Possibly brings more large businesses into the program as mentors
- Recent SBA announcement that it will make it a priority to adopt regulations for SDVO, HUBZone, and WOSBs

National Defense Authorization Act FY13

Section 1651: Limitations on Subcontracting

- SBs may no longer exclude the costs of materials, supplies, and other non-labor costs from their subcontracting limit calculations
- Forces SBs to perform more work at the prime contractor level

$$\frac{\text{Cost of labor performed by the prime}}{\text{Total labor costs under the contract}} = \text{Prime's mandatory \%}$$

Calculations prior to 2013

$$\frac{\text{Amount paid to prime or similarly situated entity}}{\text{All amounts paid under the contract}} = \text{Prime's mandatory \%}$$

FY13 Calculations

National Defense Authorization Act FY13

Section 1653: Subcontracting Plans & Past Performance



- Failure to comply with subcontracting plan can be deemed material breach of contract
- May be considered in past performance evaluations
- SBA required to establish mechanism for SBs to report fraudulent activity or bad faith

National Defense Authorization Act FY13

Other Provisions

Section 1622: Small Business Contracting Requirements Course to be established/required for all federal acquisition workers

Section 1633: Senior Executives to receive more training on SB provisions; agency heads accountable for SB contracting goals

Section 1695: Surety Bond Limits raised from \$2M to \$6.5M with exceptions to \$10M (goal is to allow more small business to compete)

Sections 1681 and 1682: Anti-fraud penalties for willful misrepresentation of small business status and limited liability if misrepresentation was made in good faith

Section 1697: Contract award caps for WOSBs removed

National Defense Authorization Act FY14

- Continues momentum with provisions to assist mid-tiers and give more teeth to requirements for agency subcontracting plans

National Defense Authorization Act FY14

Section 1611: Advancing Small Business Growth

- Improve small businesses sustainability past graduation from NAICS codes size standards
 - ❖ What happens when a business becomes too big to be small?



National Defense Authorization Act FY14

Section 1611: Advancing Small Business Growth (Cont'd)

- Pilot project to create path for mid-tier businesses to compete only with similar new grads, rather than the multi-billion-dollar enterprises
 - ❖ Three year test program
 - ❖ Would not affect SB set asides; work for mid-tier companies comes out of large business share
 - ❖ Affects only smallest of mid-tier companies



National Defense Authorization Act FY14

Section 1614: Credit for Certain SB Subcontractors

- For all prime contractors and subcontractors required to maintain SB subcontracting plans
 - ❖ Review and approve subcontracting plans of subcontractors
 - ❖ Monitor subcontractor compliance and performance with plans
 - ❖ Ensure subcontractors submit their reports
 - ❖ Acknowledge receipt of subcontractors' reports
 - ❖ Discuss performance with subcontractors when necessary to ensure a good faith effort to comply with plan

National Defense Authorization Act FY14

Section 1614: Credit for Certain SB Subcontractors (Cont'd)

- If subcontracting goals are for single contract, can count SB subcontractors at any tier
- If goals apply to multiple contracts, can only count first-tier SB subcontracting

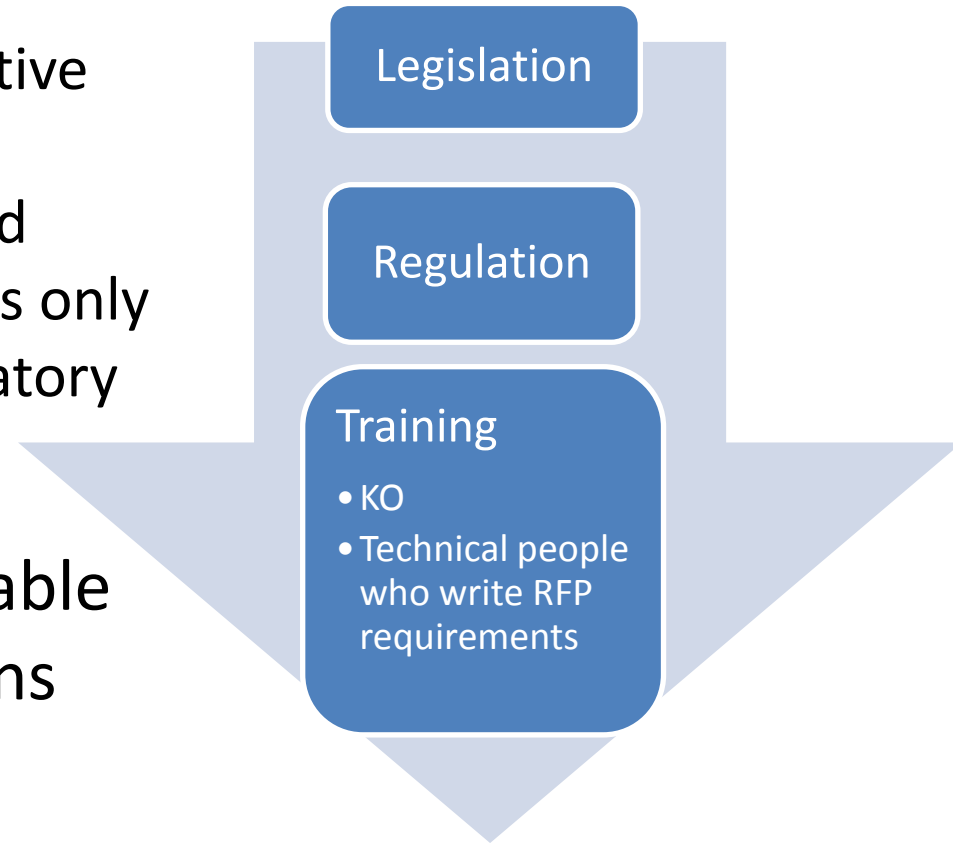
Other Provisions

Section 1612: Procurements Technical Assistance Cooperative Agreement Program to be eligible for more federal money

Section 1613: SB contracting remediation plans required for agencies that fail to meet SB goals.

Implementation Hurdles

- Lengthy process from legislation to implementation
 - ❖ Good news: 2-year legislative cycle provides pressure to speed implementation and some important provisions only have to get into the regulatory phase
- KOs must be willing and able to enforce new regulations



SB Assistance: A Delicate Balance

- Desired effects of legislation often undermined by unintended consequences
 - ❖ Decrees that SBs must do more of work on set-aside contracts might result in large businesses bringing less work to the set-aside process
 - ❖ Allowing large businesses to count work of non-1st tier SB subcontractors might lead to few SBs being considered as 1st tier subs

Questions?

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Or

The Fish Don't Jump In the Boat

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