Notes - Small Business Committee - November 12, 2014

Thank you to the Small Business Committee chairmen for leading the committee in a very interesting discussion of the proposed rule on small business size standards and a Court of Federal Claims case involving the non-manufacturer rule. Please see the Committee agenda

1. In September the Small Business Administration issued two proposed rules to revise small business size standards in North American Industry Classification System (NAICS) codes for manufacturing and certain industries with employee-based size standards.

SBA reviewed 364 industries and five exceptions to determine whether the size standards should be retained or revised. In the first rule, SBA proposes to increase size standards for 209 industries. In the second rule, SBA proposes to increase the employee-based size standards for 30 industries and three exceptions and decrease them for three industries. Of note to MAS IT contractors, SBA proposes to remove the Value Added Resellers exception under NAICS 541519 (Other Computer Related Services) together with its 150-employee-based size standard. This change could have significant impact on IT resellers and federal customers that rely on IT resellers to acquire goods and services. NAIC 517911, Telecommunications Resellers would decrease from 1500 to 750 employees. NAIC 519130, Internet Publishing and Broadcasting and Web Search Portals would increase from 500 to 1000 employees.

The Coalition did not submit comments on the rule because we did not receive sufficient comments to develop membership consensus. FYI, an ad hoc group of resellers has consolidated their efforts to oppose the rule. They have created the website http://www.savefootnote18.org/ to address the issue. The House Committee on Small Business has strongly opposed the rules. Read their comments to SBA here.

2. Rotech Healthcare vs United States addressed whether the non-manufacturer rule applied to a contract for the acquisition of both supplies and services that was assigned a services-based NAICS code. The government took the position that it did not. The government's position was based on an SBA regulation stating that the non-manufacturer rule does not apply to procurements assigned a services (as opposed to supply) NAICS code. The Court of Federal Claims ultimately decided that the SBA regulation was inconsistent with the underlying statute (the Small Business Act) and, therefore, the non-manufacturer rule did apply to the product portion of the contract, regardless of the NAICS code assigned to the contract. Read the case here. It is unclear what impact this case will have on federal acquisition. Potentially if the court's decision is applied in an acquisition that involve IT reseller exception discussed above, the reseller might have to supply the product of a small business manufacturer unless is the SBA provides a waiver of the non-manufacturer rule. Thus far SBA has not indicated how or if they will apply the logic of the decision to their rules. The Coalition Small business Committee will continue to monitor the government's action in response to this case, including any possible appeals.

3. In response to a request at the meeting the list of class waivers of the non-manfacturer rule can be found at this link.

4. Upcoming Coalition Events

November 24th from 2:00PM – 3:00PM - Coalition webinar with Bloomberg Government where we will analyze the Professional Services Schedule and what it means for your business

December 4th from 4:00PM – 7:00PM – *A Look Ahead: Federal Contracting in 2015 and Beyond*, Coalition and Bloomberg Government forum followed by networking, food, and drinks

January 14th from 8:30AM – 11:00AM – Breakfast forum with McKenna on Indirect Contracting with the Government (location TBD)

February 4th OR 5th – Coalition webinar with Tom Brady discussing Contractor Assistance Visits and the future role of the Industrial Operations Analysts (IOAs) in supporting the FAS Business Portfolio

April 28th –Coalition SPRING CONFERENCE