



NUWCDIVNPT SeaPort-e Council Meeting

May 13, 2015



Industry Questions and Answers

- **Q1: A recent SeaPort-e RFP came out as full and open competition, but the typical pass/fail requirement for a small business subcontracting plan was missing from section L. When it was requested that the government add a pass/fail requirement for a Small Business Subcontracting Plan and confirm that the Small Business Subcontracting Plan should be in the cost volume, NUWCDIVNPT responded that as a result of recent policy guidance, subcontracting plans are no longer required for SeaPort-e task orders. Would you please explain the new guidance and the rationale behind it?**
- **A1: In accordance with FAR 19.705-2(3) and 52.219-9(i) – A contract may have no more than one plan. In SeaPort, a plan exists at the MAC level and/or when a small business becomes a large business. As such, task order solicitations should not require the submittal of a “Subcontracting Plan”. However the small business participation factor is a requirement in unrestricted solicitation, which requires both a percentage goal for small business participation as well as an approach to meeting that goal.**



Industry Questions and Answers

- **Q2: A recent question and answer on a Seaport e Solicitation was posted to the portal that is a bit of a surprise to the contractor community.**
 - **The Question: “*The RFP came out full and open, but the typical pass/fail requirement for a small business subcontracting plan is missing from section L.3.0(a). Request the government add a pass/fail for the small business subcontracting plan or confirm that the Small Business Plan should be in the cost volume.*”**
 - **The Answer: “As a result of recent policy guidance subcontracting plans are no longer required for Seaport-e task orders, therefore no pass fail requirement exists in this RFP.”**



Industry Questions and Answers

- **Q2: (Continued)**
- **Can you reference who issued this guidance?**
- **Is the implementation of this NUWCDIVNPT only, or Seaport e wide?**
- **Is the tracking of small business participation being suspended, or is it being shifted to another forum?**
- **Was this policy shift vetted through the SBA or in a forum with industry to obtain comment/impact feedback?**

- **A2: As indicated in our response to Q1 – in accordance with the FAR, a contract may have no more than one plan.**
- **We can only speak for NUWCDIVNPT, that we are no longer requiring subcontracting plans for seaport-e task orders.**
- **It is being tracked at the MAC Level.**
- **Policy is in accordance with the FAR.**



Industry Questions and Answers

- **Q3: The National Defense Authorization Act of 2013 HR 4310, which became public law 112-239 changed the rules that define how small business set aside performance requirements as defined in the FAR 52.219-14 regarding the requirement of the prime to perform services that are “At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.” In a subsequent Congressional Research Service Reports and Defense Acquisition University assessments of PL 112-239 the law allows “similarly situated small business entity’s to be able to combine their performance to satisfy the “...at least 50%...” rule. In summary if a Women Owned small business was a prime awardee on a set aside contract, they will be able to subcontract to another Women Owned small business and the collective performance of the 2 WOSB would count towards that 50% rule. The implementation of PL 112-239 is under review according to Thomas Register.**



Industry Questions and Answers

- **Q3: (Continued)**
 - The question is once this is implemented, will the Seaport e contract be modified to accommodate this rule change and will subsequently issue set aside task order solicitations also having this applied?
- **A3: Whether or not action will be taken as a result of this rule cannot be determined until the rule is implemented in FAR/DFARS and guidance is provided.**



Industry Questions and Answers

- **Q4: This is a follow up to a previous asked question. Recognizing that the current award period for Seaport e is the final award period as defined in the initial Seaport e contract of 2004 and it is due to expire in April 2019. Will NUWCDIVNPT bring the question to the Seaport Council as the Zone 1 representative, on what the Navy's intentions or plans are for post April 2019? While that may seem to be a long time away, given the time it took for Seaport e to move from concept to bid and award, and given how long it took for large complex multiple award task orders to go through a similar process (e.g. TEAM SUB) the contractor community would like to be able to begin to prepare, plan, and budget for the inevitable response that will be required.**
- **A4: This issue was brought up at the Business Procurement Council (BPC) meeting in November 2014. NAVSEA is currently collecting information and ideas. We will provide once known.**
- **However we are beginning to add the following language in SeaPort RFP's and recently awarded task orders that contain options with start dates beyond the end date of the current SeaPort-e MACs:**
 - **Award of Option(s) is contingent upon:**
 - **1) an extension of the basic contract beyond the start date of the period of performance for the option, and;**
 - **2) a determination to exercise the option made in accordance with FAR 17.207 and DFARS 217.207.**



Industry Questions and Answers

- **Q5: This also is a slightly different approach to a previous question. There was an excellent industry day that took place in June 2014. A tremendous amount of information was provided to the community to assist in their business planning and to ultimately increase competition. Since that time events have occurred that has rendered some of that information inaccurate or obsolete.**
- **Would it be possible to consolidate the planned solicitations into a simple table, spreadsheet, or database, and update at least the most basic data on them, such as if the solicitation is still active, the current expected/planned issue date, award date, size, and set aside status and post that on the NUWC web site?**
- **A5: "We anticipate posting this information to the DIVNPT Electronic Reading Room at:
<http://www.navsea.navy.mil/nuwc/newport/pages/ElectronicReadingRoom.aspx> in late May, 2015, and will update it each quarter"**



Industry Questions and Answers

- **Q6: Would contracts consider requiring a large business that is grandfathered in Seaport as a small business and bidding on SBSA opportunities to provide a small business sub-contracting plan with their proposal?**
 - **Discussion: 14% of all NUWCDIVNPT SBSA over the past 3 years have been awarded to large businesses. When a large business (grandfathered as a small business in Seaport) partners with another large business and is awarded the contract, it negates the government's intent of issuing a SBSA. However, by adding a requirement for large businesses (grandfathered as a small business in Seaport) to provide and adhere to a small business sub-contracting plan, the government's intent is met.**
- **A6: To be eligible as a Small Business, Service Disabled Veteran Owned Small Business (SDVOSB), 8(a) Business, or HubZone Business during the competitive ordering process, the Offeror must have had that status at the time of proposal submission that resulted in the award of the SeaPort Enhanced IDIQ contract award, or for orders solicited under this contract after the close of the base period must properly hold that status at the beginning of the option period.**

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Industry Questions and Answers

- **Q7: How does contracts apply FAR 52.216-8? What would be their approach and legal basis for approach in the following example:**
 - **Example: The contractor is negotiating with their customer and DCAA related to fee withholds under FAR 52.216-8. The contractor's understanding of the FAR from research, outside legal counsel and various other sources, i.e. DAU and WIFCON, is that the Contracting Officer (CO) is required to set the fee withhold anywhere between 1% and 15%, and then deduct the applicable percentage from the contractor's payment. However, DCAA recently informed, if the CO fails to establish the withhold or make deductions from payment, it is the contractor's responsibility to voluntarily deduct the maximum 15% of fee from its own invoices. The contractor is not permitted by the contract to bill less than all of the amounts due and owing, and FAR 52.216-8 does not direct or permit the contractor to do otherwise.**
- **A7: If the NUWC PCO does not establish a specific fee withholding in the schedule, then fee withholding falls upon the DCMA Administrative Contracting Officer (DCMA Instruction 106). It is our understanding, DCMA typically sets fee withholding at 15%.**



Industry Questions and Answers

- **Q8: NUWC Pricing Sheet**
 - **Would you please walk us through an example of how to plug in factors to determine escalation within NUWC's pricing sheet?**
 - **In addition, would you please discuss how escalation is calculated?**

- **A8: See next Slide**



Industry Questions and Answers

NUWC Pricing Sheet						
Colored = input cells						
CONTRACT ESCALATION						
	MM/DD/YR	CALENDAR YEAR	RATE/YEAR			
DATE OF ACTUALS	5/1/15	2014	2.90%			
START (Contract Start Date)	5/1/15	2015	2.90%			
COMPLETION (Contract End Date)	4/30/20	2016	2.90%			
# CONTRACT YEARS	5.00	2017	2.90%			
		2018	2.90%			
		2019	2.90%			
		2020	2.90%			
		CY	DAYS	RATE/YR	FACTOR	DAILY
DATA TO START		2014	0	0.00%		
DATA TO START		2015	0	0.00%	1.000	
START TO END OF YR		2015	244	1.94%	1.010	0.675
FIRST CY OF PERF		2016	366	2.91%	1.034	1.037
SECOND CY OF PERF		2017	365	2.90%	1.064	1.064
THIRD CY OF PERF		2018	365	2.90%	1.095	1.095
FOURTH CY OF PERF		2019	365	2.90%	1.127	1.127
FIFTH CY OF PERF		2020	121	0.96%	1.148	0.381
ESCALATION TO MIDPOINT:				7.52%		

DATE OF ACTUALS: Based on labor rate effective date: (payroll, category averages, FPRR, SCA, etc.)

RATE/YEAR: Proposed escalation rate is applied for each calendar year

CY = Calendar Year

DAYS = Number of days applicable for that calendar year. In this example CY 2015 has 244 of 365 days since the contract start date is 5/1/2015

RATE/YEAR = Based on number of DAYS applicable - prorated escalation rate calculated for each CY. For example: CY 2015 = 244 DAYS divided by 365 days a year multiplied by 2.90% as defined in RATE/YEAR column = 1.94% prorated.

FACTOR = Annual factor is determined by RATE/YR multiplied by prior RATE/YR. Resultant is multiplied by DAYS and FACTOR to determine DAILY rate

ESCALATION TO MIDPOINT: Sum of DAILY factors divided by number of contract years minus 1 = 7.52% for the period of performance

Midpoint escalation is calculated based on the "DATE OF ACTUALS."
 - Date of Actuals is based on the labor rate effective date. (i.e. payroll, category averages, FPRRs, SCA, etc.)
 The "START DATE" is contract start date.
 The "COMPLETION DATE" is contract end date.

For cost realism purposes, the higher escalation rate: proposed or current NUWCDIVNPT Global Insight Rate (GIR) of 2.90% is applied in RATE/YR column

Calculation of the mid-point escalation factor for Non-SCA rates is based on the effective date of the labor rates proposed.
 Calculation of the mid-point escalation factor for SCA rates is based on the planned award date.



Industry Questions and Answers

- **Q9: Please explain how a Sources Sought notice affects a solicitation's release.**
 - In particular, is there any typical number of days after a Sources Sought notice has closed that a solicitation is released?
 - If there is no typical number of days beyond when a Sources Sought closes that a solicitation is released, would you please walk us through some of the things that may occur between the Sources Sought closure and solicitation release and the approximate impact that has, in days, to the solicitation's eventual release?
- **A9: No, Sources Sought are issued at various stages throughout the presolicitation phase so there is no set timeframe.**
- **The Government is working on numerous documents such as Statement of Work, Sections L and M, Source Selection Plans, Acquisition Plans, Determination and Findings, Justification and Approvals, Waivers, etc. These documents depending on an acquisition can vary in complexity and signature authority, therefore no one timeframe can be established. As mentioned at previous SeaPort meetings, we will continue to provide advance notices and updates thereto as soon as possible. In addition, based on the results of the sources sought, the negotiator will include in the advance notice "As a result of the sources sought announcement #, this procurement is being solicited as a Small Business Set-Aside or as Unrestricted".**



Industry Questions and Answers

- **Q10 – Has NUWC realized an upward trend in pre-award protests, and do recent pre-award protests share commonalities?**
- **A10 – No preaward protests have been received other than one for a Simplified Acquisition procurement.**



Industry Questions and Answers

- **Q11 – What is the impact of pre-award protests on timing in the acquisition cycle, e.g., extension of due dates, delays to awards, bridge contracts or extensions of already-awarded bridges?**
- **A11 – NUWCDIVNPT operates in accordance with FAR 33.1. GAO has 100 days to review and issue a ruling. However, as stated previously we've only had one pre-award protest and that is on a SAP.**



Industry Questions and Answers

- **Q12 - A number of solicitations require adherence to the Service Contract Act (SCA). Many times the description of work requires a more sophisticated worker than the labor category associated with the SCA – yet companies will bid the minimum rate associated with an SCA labor category and have it accepted by the government. In the long run, this is neither good for the government nor the contracting community. Certainly the SCA a good piece of legislation, however in many cases there is no reason invoke it for many of the professional service contracts the Navy puts out – especially if the Navy wants to get the caliber of worker necessary to provide the support called out in solicitations.**
- **Recommend the Navy review the labor categories associated with the SCA for every solicitation and ensure that caliber of personnel will be adequate for the contract before invoking it. If it is decided to invoke the SCA, then there should be no reason to provide details of personnel requirements within the PWS.**
- **A12 – In accordance with FAR Part 22 Service Contract Labor Standards (SCLS, formerly known as the Service Contract Act of 1965), “applies to all Government contracts, the principal purpose of which is to furnish services in the United States through the use of service employees”. Based on the guidance contained in the Department of Labor Field Operations Handbook, NUWCDIVNPT requires SCLS apply on all SeaPort-e task orders where 20% or greater of the total labor hours consists of SCLS applicable labor categories per the IGCE. Section L requirements are for purposes of determining an offeror’s understanding of the requirements and their approach to execute (i.e., specifically technical evaluation of the proposed labor matrix is performed to determine appropriateness). Only key personnel proposed require resumes.**

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Industry Questions and Answers

- **Q13 - The debrief content is different depending upon if you lost the bid or if you won the bid. For instance, if you lose a bid, the debrief will contain the names of the other offerors as well as evaluated costs by company, the assessor's ratings on submitted past performance data listed by company and the assessor's ratings on technical approach/personnel management/training listed by company. The debrief then goes on to list areas rankings and other information pertinent to the requesting company. However, when the winning bidder requests a debrief, they are not provided with the names of the other bidders, their evaluated costs, evaluation scores, etc.**
- **Can you explain the difference in debrief content between when a losing company makes the request versus the winning company?**
- **Is it possible that the winning bidder could also obtain the same content as the losing bidder?**
- **A13 – NUWCDIVNPT follows FAR 15.506, with the exception of ranking. NUWCDIVNPT does not rank offerors. Therefore a winning bidder will receive the overall technical ratings of its proposal; any strengths, weaknesses, significant weaknesses or deficiencies; its overall evaluated cost or price and how it was arrived at; past performance information (confidence assessment) and a summary of the rationale for award.**
- **An unsuccessful offeror receives the same information regarding its proposal as above plus the name of the awardee, the Government's total evaluated cost or price of the awardee only (no specifics of how it was arrived at), and the overall Technical Rating of the awardee (no specifics of how it was arrived at).**



Conclusion

- Thank you NCMA for coordinating the questions for this SeaPort-e Council meeting
- Once approved by PAO, this Briefing will be posted to the DIVNPT Electronic Reading Room at:
<http://www.navsea.navy.mil/nuwc/newport/pages/ElectronicReadingRoom.aspx>
- Upcoming Events
 - June 10, 2015: NCMA “Ocean State Workshop”
 - June 23, 2015: Code 25 Industry Day
 - August 26 - 28, 2015: SENEDIA Defense Innovation Days
 - October TBD, 2015: Small Business Product Vendor Industry Day
 - November 5, 2015: AUTECH Industry Day
 - November 6, 2015: Annual Service Disabled Veteran-Owned Small Business/Veteran-Owned Small Business (SDVOSB/VOSB) Training Event
 - December TBD, 2015: Next SeaPort-e Council Meet

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