

PROTORÆ LAW_{PLLC}

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American Legion 2011 Annual Convention
Small Business Workshops

Introduction to Government Contracts Laws and Regulations

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Government Contracts v. Commercial Contracts

- Government is guardian of public fisc
 - ✓ Must get a good deal
 - ✓ Must exercise sound financial management
 - ✓ Must use buying power to implement socio-economic policies
 - ✓ Purchases must be consistent with national policies

Government Contracts v. Commercial Contracts

- Leverage

- ✓ U.S. federal government is largest purchaser in the world = \$300 billion/year
- ✓ “most favored customer”
- ✓ Purchases backed by “Full Faith and Credit” of the US Government

Sampling of Important Procurement Statutes

- Competition in Contracting Act
- Anti-Deficiency Act
- Procurement Integrity Act
- Contract Disputes Act
- Freedom of Information Act
- Tucker Act
- Small Business Act
- Veterans Entrepreneurship Act
- Veterans Benefits, Healthcare and IT Act
- Veterans Benefits Act of 2010

Federal Acquisition Regulation (FAR)

- Implements procurement and other statutes
- Codification and publication of “uniform policies and procedures” for acquisition by all executive agencies
- Acquisition = acquiring by contract with appropriated funds of supplies, services or construction by and for the use of the Federal Government
- FAR issued by the Department of the Defense, the General Services Administration and NASA

Federal Acquisition Regulation (FAR)

- 52 “Parts”
- Parts 1 – 50, applicable to agencies
 - ✓ Parts 1-4 General
 - ✓ Parts 5-12 Acquisition planning
 - ✓ Parts 1-18 Contracting Methods/Types
 - ✓ Parts 19-26 Socio-Economic Programs
 - ✓ Parts 27-33 Contracting Requirements
 - ✓ Parts 34-41 Special Categories
 - ✓ Parts 42-51 Contract Management
- Part 52, solicitation provisions/contract clauses

Federal Acquisition Regulation (FAR)

- Agency Supplements
- Special Numbering System
 - ✓ FAR Part 27 = 27.103
 - ✓ FAR Part 52 = 52.227-3
 - ✓ DFARS Part 27 = 227.1003
 - ✓ DFARS Part 52 = 252.227-7001
 - ✓ AFARS Part 5127 = 5127.203
 - ✓ AFARS Part 5152 = 5152.227-9000

Solicitation Provisions/Contract Clauses (Part 52)

- Uniform Contract Format
 - ✓ Part I = the Schedule (Sections A-H)
 - Section A Solicitation/Contract Form
 - Section B Supplies/Services and Prices
 - Section C Specifications
 - Section D Packaging and Marking
 - Section E Inspection and Acceptance
 - Section F Deliveries/Schedule
 - Section G Contract Administration Data
 - **Section H Special Contract Clauses**
 - ✓ Part II = Contract Clauses aka “Flow-Downs”
 - **Section I Contract Clauses IBR**

Solicitation Provisions/Contract Clauses (Part 52)

- ✓ Part III = Documents/Attachments
 - Section J List of Documents, Exhibits and Other Attachments

- ✓ Part IV = Reps/Instructions
 - **Section K** **Reps and Certs (ORCA)**
 - **Section L** **Instructions, Conditions, Notices**
 - Section M Evaluation Factors for Award

The Small Business Act

- Enacted to promote and enforce US small business policies
 - ✓ Agencies must maximize procurement opportunities for small businesses
 - ✓ Prime contractors must provide businesses the “maximum practicable opportunity” to receive subcontracts, to the extent “consistent with contract performance”

The Small Business Act

- Identified Small Business Contracting Goals
 - ✓ Government-wide prime contract goals
 - Small Business 23%
 - SDBs 5%
 - WOSBs 5%
 - HUBZones 3%
 - SDVOSBs 3%
 - ✓ Government-wide Subcontracting Goals

The Small Business Act

- Agency-wide Contracting Goals

- Established SBA-Managed Small Business Contracting Programs
 - ✓ Section 8(a) Program
 - ✓ Women-Owned Small Business Program
 - ✓ HUBZone Program
 - ✓ **SDVOSB Program**
 - ✓ Subcontracting Program

Small Business Regulations

- FAR Part 19

- 13 CFR Part _____
 - ✓ Part 121 Size
 - ✓ Part 124 Section 8(a) Program
 - ✓ Women-Owned Small Business Program
 - ✓ Part 126 HUBZone Program
 - ✓ **Part 125** **SDVOSB Program**
 - ✓ Part 125 Subcontracting Program

Department of the VA Veterans Programs

- Different statutory authority and different implementing regulations than SBA Programs
 - ✓ Small Business Act = SBA = SDVOSB Program
 - ✓ Veterans Benefits Act (2006, 2010) = VA = **Veterans First Contracting Program**

Department of the VA Veterans Programs

- ✓ Veterans First Contracting Program
 - ✓ Provided VA with the authority to implement and manage its own programs assisting SDVOSBs *and* VOSBS
 - ✓ Program name refers to hierarchy of preferences: SDVOSB, VOSBs, then WOSBs or 8(a) or HUBZone contract awards
 - ✓ Required VA to verify SDVOSB/VOSB status
 - ✓ Established **VA Mentor/Protégé Program**
 - ✓ Veterans Regs and VAARS

Questions?