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Curtail the Use of Improper Contract Bundling in Federal Construction Procurements So Small Construction Firms Can Compete

Background:

- According to the Small Business Act of 1997, contract bundling is “consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business¹.” The Act requires each federal department and agency, to: (1) structure contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and (2) avoid unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors.
- To justify contract bundling, federal government agencies must demonstrate measurably substantial benefits such as cost savings, quality improvements, reduction in acquisition cycle times or better terms and conditions.²
- Demands to make the acquisition process quicker and less complex coupled with reductions in the overall acquisition workforce have driven acquisition managers to bundle requirements at the expense of small contractor participation in federal procurement.
- Without legislative intervention, contracting agencies will continue to consolidate smaller procurements into larger contracts, thereby impeding or foreclosing small business participation and lessening competition for federal projects.
- Recently, U.S. Army Corps of Engineers called into question whether anti-bundling rules apply to construction procurements. In *Tyler Construction Group v. U.S.*, 83 Fed. Cl. 94 (Fed. Cl. 2008), the U.S. Court of Federal Claims stated “whether the bundling provisions of 15 U.S.C. § 631(j) should or do apply to acquisitions for new construction is a question we leave to Congress.”

NASBP Message:

- Adopt needed legislative reforms, such as the Small Business Fairness in Contracting Act, H.R. 1873, 110th Cong. (2007), passed by the House, that amend the definition of contract bundling to specifically include procurements for construction so that small construction businesses can more fully participate as prime contractors on federal construction projects.
- Fund recruitment and training of federal contracting officials since this labor force has experienced significant attrition due to retirement and to private sector opportunities.
- According to a May 12, 2008 article appearing in the *Federal Times*, “the govern-

NASBP GovRel
Position Brief
Vol I No 3
September 2009
page 1 of 2



National Association of Surety Bond Producers—Professionals in Surety Bonding

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ment's contracting work force is in turmoil. About one in eight people changed jobs, changed agencies, retired or left the government last year, according to a new study. And about 1/3 of those left the government before they were eligible to retire.”

- Establish greater transparency of reporting requirements by contracting agencies to curtail improper bundling of construction contracts by federal contracting officers.
- By taking actions to curtail improper bundling of smaller federal construction projects into larger projects, the federal government would:
 - Facilitate greater participation of small construction contractors in the federal procurement arena,
 - Increase the likelihood that contracting agencies will meet or exceed their small business participation goals, and
 - Increase competition for federal procurements, thereby providing pricing benefits to contracting agencies.

Who is the National Association of Surety Bond Producers (NASBP)?

Established in 1942, NASBP (www.nasbp.org) is a national organization of professional surety bond producers and brokers, representing over 5,000 personnel who specialize in surety bonding, issuing bid, performance, and payment bonds for the Nation's construction projects. Bond producers bring value to the contractor-surety relationship, and surety bonds bring value to the Nation's construction projects. Bond producers virtually touch every contractor bidding or proposing on public works projects.

NASBP GovRel
Position Brief
Vol I No 3
September 2009
page 2 of 2

¹ The statutory definition of bundled contracts Small Business Act (15 U.S.C § 632(o)(2)).

² The statutory requirements to determine if bundling contracts are necessary. Refer to Section 15(e) of the Small Business Act (15 U.S.C § 644(e)). Also see FAR 7.107 (b).

