INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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JUN 2 1 2004

MEMORANDUM FOR DIRECTOR, DEFENSE ACQUISITION REGULATION COUNCIL

SUBJECT: Defense Federal Acquisition Regulation Supplement Case No. 2003-D060, "Threshold for Small Business Specialist Review"

We have reviewed the Defense Federal Acquisition Regulation Supplement (DFARS) Case No. 2003-D060, "Threshold for Small Business Specialist Review." The proposed case would change DFARS 219.201, "General Policy," by relocating and revising text pertaining to the DoD implementation of small business programs. We agree with the proposed changes; however, some additional wording should be included with the deleted DFARS 219.201(e) text being relocated to either the DFARS companion resource, "Procedures, Guidance, and Information" (PGI) or DoD Directive 4205.1, "DoD Small Business and Small Disadvantaged Business Utilization Programs."

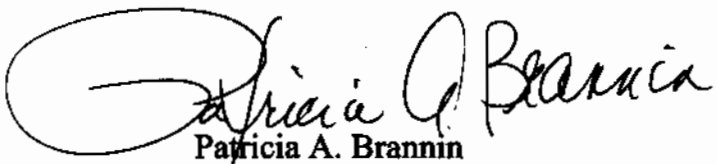
Specifically, the deleted text from DFARS 219.201(e)(vii) should be augmented to require verification by small business specialists that small businesses are not acting as brokers. According to Title 13, Code of Federal Regulations, Section 124.108(d), brokers are ineligible to participate in the Section 8(a) Business Development Program. Section 124.108(d) defines a broker as a "concern that adds no material value to an item being supplied to a procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities." During recent audits, including reviews of DoD Hotline allegations and Congressional complaints, the Deputy Inspector General for Auditing, DoD staff found that many small businesses were acting as "brokers." For instance, in one case, the Defense Supply Center, Columbus awarded seven contracts to a business that then brokered them by subcontracting the work. The purpose of the Section 8(a) Program is to help small disadvantaged businesses to compete in the economy through business development. Brokers are prohibited from participating in the program because they do not contribute significant value to the product. Instead, they pass on additional contract costs in the form of overhead costs to the Government.

In some cases, personnel processing the contracts were simply not aware of the prohibition on broker participation. In addition, neither the Federal Acquisition Regulations nor the DFARS currently contain a requirement to ensure that small businesses are in compliance with the Title 13 prohibition. Therefore, we suggest that the proposed PGI 219.201(e)(vii) be changed by adding the following underlined words:

...to determine compliance with subcontracting plans, including compliance with Title 13, Code of Federal Regulations, Section 124.108(d) that prohibits contractors or subcontractors from acting as brokers; and...

Requiring small business specialists to verify that Section 8(a) contractors are not acting as brokers will help achieve the overall objective of the Section 8(a) Program.

Thank you for the opportunity to comment on the proposed rule. If you have any questions, please contact Ms. Pat Bartron at (703) 604-8753.



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