



U.S. Department of Veterans Affairs
Office of Small and Disadvantaged Business Utilization
Small Business AdVocAte

Notes From Scott...



*Scott F. Denniston
 Director, VA OSDDBU*

I want to thank everyone that attended the 2nd Annual National Veterans Small Business Conference in Las Vegas, June 26-29, 2006. The event was a great success! Some of the feedback from participants indicated they would like to have seen more VA acquisitions and logistics professionals in attendance in order to network with these folks. We realize that there were other events that conflicted with this important event that made the attendance of these individuals impossible. We hope to see maximum participation VA folks at the 3rd Annual National Veterans Business Conference. Next year's conference will also be held the last week of June 2007 in Las Vegas. I will give you more specific information on exact dates and hotel location in the next edition of the [VA Small Business AdVocAte](#). Please mark your calendars now to save the last week of June 2007!

Our socioeconomic numbers in the Veteran-Owned Small Business and Ser-

vice-Disabled Veteran-Owned Small Business Categories continue to look good. As of July 31, 2006, VA's accomplishments were 6.61% and 3.68%, respectively. I want to thank everyone for their continued support of veteran entrepreneurs. June 2006 was the first month VA ever exceeded the Service-Disabled Veteran-Owned Small Business goal of 3%, with accomplishments of 3.72%. We dropped 4/100 of a percent from June to July, but the numbers are still impressive. It will take the continued commitment, dedication and a concerted effort on everyone's part to ensure that we remain above the 3% goal. I hope when I prepare my column in the December issue of the [VA Small Business AdVocAte](#) that we will be able to report that VA is the first major department/agency to exceed the 3% statutory goal for Service-Disabled Veteran-Owned Small Businesses. It is within reach—we cannot let this slip away from us!!

September is already upon us. As VA's acquisition professionals enter their busiest month, I hope that you will continue to use Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses to satisfy your end-of-year needs. Best wishes for a happy new fiscal year!

Scott

Volume 6—Issue 7
September 2006

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Expiration of PCHS-2 Contract

The Senior Advisor to the Deputy Secretary issued a memorandum stating that as of August 25, 2006, no further orders may be issued under the VA-wide PCHS-2 contract vehicle because the \$1.375 billion dollar ceiling has been reached. Since the ceiling can't be increased, the Deputy Secretary recently approved mandatory use of NASA's SEWP IV contracts; however, they are not expected to be awarded for several more months. In the interim, acquisition professionals and program officials have been instructed to use the existing SEWP III contract (see <http://sewp.nasa.gov>). The VA approval process will remain unchanged. If an item has been approved for purchase from the



PCHS-2 contract vehicle, it should now be purchased using SEWP III. No additional tracker approval is needed as long as the exact item as originally approved is ordered. If the exact item is not available on any SEWP III contract, GSA schedules should be used. If the exact item is not available on either of those contracts, item(s) may be procured via open market purchase and/or small business set-aside(s).

VA Retains PCHS-3 SDVOSB Set-Aside in Transition to SEWP IV

By: Terry Stewart, Small Business Specialist

The Department of Veterans Affairs' (VA) decision to transition from Procurement of Computer Hardware and Software (PCHS-3) to NASA's Scientific and
(Transition to SEWP IV, continued on Page 2)



Remembering Those Who Served

(Transition to SEWP IV, continued from Page 1)

Engineering Workstation Procurement (SEWP IV) in no way diminishes VA's commitment to the service-disabled veteran-owned small business (SDVOSB) community. SEWP IV retains the proposed PCHS-3 SDVOSB set-aside that covered printers, peripherals and non-enterprise software.

In early 2006, VA's CIO commissioned a study conducted by Logistics Management Institute to determine if VA will continue with the development of the PCHS-3 contract or use an alternative contract vehicle for the acquisition of information technology products. Based on the results of the study and current needs, VA decided to use NASA's SEWP IV contract rather than continuing with PCHS-3.

SEWP is divided into eleven classes. Class 9, Mass Storage Devices, is a set-aside totally for SDVOSBs. VA will require that all printers, peripheral devices, and non-enterprise software be purchased from SDVOSB awardees in Class 9. In addition to the Class 9 set-aside, SDVOSB awardees may also bid on any of the other ten classes of products (see below).

To ensure that SDVOSBs obtain at least 12% of VA's total IT expenditures, VA will monitor all its purchases under SEWP IV to determine the extent of participation by SDVOSBs. If it is determined that participation of SDVOSBs does not meet VA's goals and objectives, VA will consider the use of an alternative acquisition strategy/vehicle.

The SEWP IV solicitation was issued on May 5, 2006. Proposal due date for all SEWP IV classes was August 9, 2006 with the exception of Class 9 - Mass Storage Devices (SDVOSB set-aside), which was extended until September 12, 2006 to give interested SDVOSBs additional time to respond. All small businesses, especially SDVOSBs, are encouraged to review the SEWP IV solicitation located on the Federal Business Opportunities Web site at: <http://www.fedbizopps.gov> or at: <http://www.sewp.nasa.gov/sewpiv/>.

SEWP IV Classes

- Category A** (Computer Systems/Servers) NAICS 34111
 Class 1 - Mass Storage Servers
 Class 2 - Database Servers
 Class 3 - High-Performance Visualization Computer Systems
 Class 4 - High Performance Compute Servers
 Class 5 - Science and Engineering General Purpose Systems

- Category B** (Complementary Products) – NAICS 541519
 Class 6 - Server Support Devices (Small Business set-aside)
 Class 7 - High-End Networking
 Class 8 - Computer Security Systems and Tools
 Class 9 - Mass Storage Devices (SDVOSB set-aside)
 Class 10 - Advanced Video and Conference Tools
 Class 11 - Multi-Functional Printers



OMB's Acquisition Advisory Panel's Small Business Working Group Recommends Eliminating Cascading Procurement Techniques

By: Victoria Johnson, Small Business Specialist

Cascading procurement techniques are hot procurement strategies which provide Contracting Officers the option to divide the evaluation of offers into tiers based on the socioeconomic status of the offeror. However, some say the cascading procurement concept was established for administrative convenience and as a way of side stepping market research. Some in industry opine that it is a poor proxy for market research.

The Office of Management and Budget (OMB) Acquisition Advisory Panel (AAP) members, selected back in February 2005, recently drafted a comprehensive preliminary report detailing their rationale why existing laws should be amended to eliminate cascading techniques.

OMB's AAP consists of subject matter experts from both public and private sectors with varying backgrounds specializing in government acquisition law and policy. The Panel members facilitate regularly scheduled meetings that are published in the Federal Register. I have personally had the opportunity to attend some the Panel's meetings and found them to be educational and interesting. AAP was developed to review acquisition laws, regulations and government-wide acquisition policies with special emphasis towards ensuring effective and appropriate use of commercial practices and performance-based contracting. Additionally, they were tasked with making recommendations for any necessary changes to acquisition laws and regulations.

Although the topics initially identified for examination by the Panel cross-cut a variety of acquisition functions, once established, the Panel met and they identified a need to form a Small Business Working Group. The Working Group tackled a number of vital small business issues such as contract consolidation, guidance in using small business contracting programs (order of precedence), proper application of contract bundling definition, and cascading procurements just to name a few.

Since more agencies are increasingly using cascading procurement techniques, a decision was made by this group to address this issue. Some opine that contracting officers select a cascading procurement strategy to reduce or eliminate the time necessary to conduct an acquisition.

As a result of the Working Group's research and fact finding, they discovered that cascading procurements are detrimental for the following reasons:

- ◆ cascading techniques tend to hurt rather than help small businesses;
- ◆ cascading fails to balance the Government's interest in quick and efficient contracting with governing requirements for maximum practicable small business opportunities;
- ◆ cascading disregards important procurement requirements to the detriment of both small and large businesses and places undue burden on contractors;

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- ◆ this practice impedes competition and circumvents the requirement to perform market research.

The working group emphasized in their preliminary report the importance of adequate market research.

The preliminary draft states, “Contracting Officers will know whether there are two or more 8(a), HUBZone, service-disabled veteran-owned small businesses or small businesses that can offer on a requirement during the procurement planning stage.”

The working group recommends to Congress the following changes to legislation:

- ◆ Rescind the recently enacted Section 816 of the National Defense Authorization Act for Fiscal Year 2006, which currently allows for cascading procurements under certain limited situations
- ◆ Add language to 10 U.S.C. 2304, which applies to civilian Administration (NASA) and to 41 U.S.C. 253, which applies to civilian agencies, to expressly prohibit cascading procurements.

The recommendation to eliminate cascading procurement techniques comes as no huge surprise. Many Acquisition professionals are likely to agree that the handwriting has been on the wall in this regard for sometime and now the dye has been cast.

Waivers of the Non-manufacturer Rule

By: Deborah Van Dover, Senior Procurement Analyst

In *Rotech Healthcare, Inc. v. United States*, the U. S. Court of Federal Claims published an important decision regarding Veterans Health Administration (VHA) Request for Proposals 583-00035-06 and 247-0082-06 for Home Oxygen. The decision provides a new interpretation of the non-manufacturer rule for small businesses (13 C.F.R. § 121.406 (b) and FAR 19.102(f)) and may impact future federal government solicitations that combine acquisitions for supplies and services.

To clarify, the judgment of the court is that the solicitations involved are acquisitions for products (i.e., supplies) and are not acquisitions for services. Section 210 of Public Law 101-574 requires that small businesses supply the products of domestic small business manufacturers or processors on all small business set-asides unless waived by the Small Business Administration (SBA). This requirement is commonly referred to as the “non-manufacturer rule”. Given the recent judgment of the court, VA Home Oxygen contracts that were set-aside for small businesses are now subject to the “non-manufacturer rule.” This means that a VHA Home Oxygen contractor that was awarded a contract as a result of a solicitation set-aside for small business must provide equipment manufactured by small businesses. In other words, small business set-asides for Home Oxygen where the manufacturer is not a small business are not allowed. Home Oxygen solicitations issued under full and open competition are not impacted. Like-

wise, Home Oxygen contracts awarded using full and open competition are not impacted.

Section 303 (h) of Public Law 100-656 and Section 210 of Public Law 101-574 incorporated into the Small Business Act a requirement that a recipient of a contract set-aside for small business, to include HUBZone small businesses and service-disabled veteran-owned small businesses, or SBA’s 8(a) contract program, other than the actual manufacturer or processor, must provide the products of a small business.

The Small Business Act also contains provisions which allow for the Administrator of the SBA to waive this requirement when there are no small business manufacturers or processors available to supply the product to the Federal Government. Section 8 (a)(17)(B)(iv) allows the Administrator to grant waivers of the Non-manufacturer Rule; however, the Administrator has delegated the authority to make decisions on waivers of the Non-manufacturer Rule to the Associate Administrator for Government Contracting when:

- ◆ after reviewing a determination by a contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period of performance) required of an offeror by the solicitation; or
- ◆ for a product or class of products after determining that no small business is available to participate in the Federal procurement market.

These two types of waivers of the Non-manufacturer Rule are regularly referred to as “class waivers” and “individual waivers” or “solicitation-specific.”

Class Waivers

For the purpose of waivers, a class of products is defined based on the Office of Management and Budget’s North American Industrial Classification System (NAICS) Manual and, at the present time, on the General Services Administration’s Product and Service Code Directory. Within each four-digit code are subdivisions of products which can be considered for waiver. A request for a waiver of a class of products should refer to a specific subdivision, or statement of product, within a four-digit code in one of these manuals.

Any individual or organization (government agency, business, association, etc.) may request a waiver for a class of products. The request should be in writing addressed to the Associate Administrator for Government Contracting and should specifically state the class (or classes) of products for which the waiver is sought.

Individual Waivers

Only a contracting officer for the Federal Government may request an individual or solicitation-specific waiver. The request should be in writing and addressed

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to the Associate Administrator for Government Contracting and should consist of:

1. a definitive statement of the specific item(s) to be waived;
2. the solicitation number for the procurement on which the item(s) is required and a brief statement of the procurement history; and
3. a determination by the procuring agency's contracting officer that there are no known small business manufacturers for the requested items. The determination must contain:
 - ◆ a clear statement of the contracting officer's efforts to search for small business manufacturers or processors of the item(s) and the results of those efforts. This should include information on the findings of a search of the Central Contractors Registration (CCR) database using the dynamic small business search function, or other market survey performed, and the results of discussions with small business representatives to find manufacturers. For example, the representative may be a member of the Office of Small and Disadvantaged Business Utilization (OSDBU) or an SBA Procurement Center Representative (PCR); and a statement by the contracting officer that there are no known small business manufacturers for the items and that no small business can reasonably be expected to offer the required supplies.

While a contracting officer may request an individual waiver for more than one item on a solicitation, he or she must include a determination which includes the above information for each item.

If you have any questions, please contact Deborah Van Dover, telephone (202) 565-7795.

Subcontracting Corner

Electronic Subcontracting Reporting System (eSRS)

By: Lynette Simmons, Small Business Specialist

On August 2, 2006, OSDBU sent out 174 letters to all prime contractors that had not entered their subcontracting accomplishments into the Electronic Subcontracting Reporting System (eSRS) for report periods ending September 30, 2004 and September 30, 2005. As of the first of September 2006, and for the first time, we can state that all prime contractors have reported subcontracting accomplishments.

In the past, prime contractors only submitted the paper Standard Form 295 Summary Subcontract Report and Standard Form 294 Individual Subcontracting Report. Since the new eSRS went live October 25, 2005, there have been some issues with some prime contractors submitting their reports to include but not limited to the following:

- ◆ Unaware of contract numbers;
- ◆ Unaware of whom their Contracting Officer (CO) was, and their respective CO's e-mail address, etc.
- ◆ Contract expired one or two years ago;
- ◆ Their subcontracting plan administrator (Small Business Liaison Officer) was no longer at the company and did not report the change;
- ◆ Thought they did not have to report subcontracting accomplishments into eSRS since the Department of Defense does not use eSRS;
- ◆ Underwent a name change

Since the information is extracted from the Federal Procurement Data System – Next Generation, when registering, VA contracting activities must register under **“Veterans Affairs, Department of (3600)”** opposed to individual organizations/offices. All registrations have been changed to reflect this.

Outreach Corner

OSDBU Vendor Day Changes

We are in the process of enhancing our Vendor Day Session. Some of the enhancements will begin in January 2007. We will update you on our Vendor Day enhancements in our next issue; Stay tuned.

FY 2007 FCO

By: Linda Sitney, Small Business Specialist

It is that time of the year again. It is time to populate our FY 2007 Forecast of Contracting Opportunities (FCO). The FCO system is the only system used by VA for collecting and publishing procurement forecast data. Title V of Public Law 100-656, the Business Opportunities Development Reform Act of 1988, requires agencies with annual procurement budget of \$50 million or greater to publish a FCO. The Office of Federal Procurement Policy (OFPP) further requires the forecast to be published on the Internet as soon as possible to give vendors advance notification of procurement opportunities in the upcoming fiscal year.

The Call memorandum for the FY 2007 FCO went out on May 31, 2006 with a due date of August 31, 2006, and contracting activities were requested to have their respective forecast data input into the FCO system by that time. The FY 2007 FCO will be published on October 1, 2006. It is important that the population of the FCO is completed no later than August 31, 2006 to allow time for review and to ensure the publication of a complete and ac

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curate FCO on October 1st. If you have not already done so, please input your FCO immediately.

Just as important as entering complete and accurate data into the FCO system is keeping the data current with regular updates. Contracting activities may update information within the FCO at anytime when a change is needed. We have received frequent complaints in the past from small businesses and the U.S. House of Representatives' Small Business Committee that the FCO is not current and complete, contending that many opportunities are never shown. Let's allay the concerns of our clients and stakeholders by publishing a robust forecast!

We thank all of VA's contracting activities for their support of VA's FCO. Please let the OSDDBU office know if we may assist you in providing an accurate forecast of your activity's procurement needs. If you have any questions regarding the FCO, feel free to contact myself at 202-565-8132 or Tamika Gray at 202-565-8133.

Exempted Items from Bundling Reviews & Forecast Submission

In an effort to rescue the workload of VA's acquisition professionals, the following acquisitions are exempted from inclusion in of the FCO and the requirement for submission of VA Form 2268 for a contract bundling and/or small business programs review. This exemption is based on these acquisitions using special procurement authorities or being satisfied using mandatory sources or other contract vehicles that previously received a contract bundling and/or small business programs review by this office:

- ◆ Nursing Home Services/Adult Care
- ◆ High Tech Medical Equipment, CTC Scanner and MRIs—NAC Direct Delivery procurements only
- ◆ Delivery Orders against IDIQ contracts previously reviewed by OSDDBU
- ◆ Prosthetics, artificial limbs, purchases for customized vans, homes—only when procured under Title 38, 8123
- ◆ Contracts with Affiliates
- ◆ Bulk Oxygen, only from NAC on FSS
- ◆ Acquisitions against PCHS contracts and their successor contracts
- ◆ Pharmaceutical Federal Supply Program, Innovator, single source drugs, special item number 42-2A + Orders and BPAs
- ◆ BPAs placed against Federal Supply Schedule Contracts/ GSA
- ◆ Consignment Agreements

Although the nursing homes have been exempted from the 2268 and FCO submission requirements, please consider small businesses when soliciting for these

Note: Certain items will never lend themselves to small business i.e. utilities.

SBA: Federal Prison Industries Not Small for Services

The Small Business Administration has ruled that Federal Prison Industries (FPI) cannot win service contracts set-aside for small businesses. Set-asides are designed to afford small businesses the maximum practicable opportunity to participate in the performance of federal government contracts. Therefore, FPI is ineligible to win work set-aside for small businesses because it is neither a for-profit business nor classified as "small" under the rules of the Federal Acquisition Regulation. In addition, FPI exceeds the applicable size standard of \$10.5 million in annual receipts and does not even qualify as a "business concern" eligible to bid on set-asides for small business concerns.

FPI, also known as Unicor, was established to keep federal inmates busy and to help them develop vocational skills and reduce recidivism. FPI sustains itself without congressional appropriations and in the past, the corporation has benefited from regulations requiring agencies to buy office furniture, uniforms and other products.

Before purchasing an item of supply listed in the FPI Schedule* (see the lists of those items, of which its mandatory sources applies at http://www.unicor.gov/prodservices/prod_dir_schedule/index.cfm), acquisition professionals must conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery acquire the item using competitive procedures (e.g., full and open, partial/total small business set-asides, placing orders against a multiple award delivery-order contract etc. Mandatory

Certain purchase exceptions may impact the contracting officer's actions in that FPI's mandatory source either does not apply, or applies differently in some instances.

*Mandatory source does not apply to:

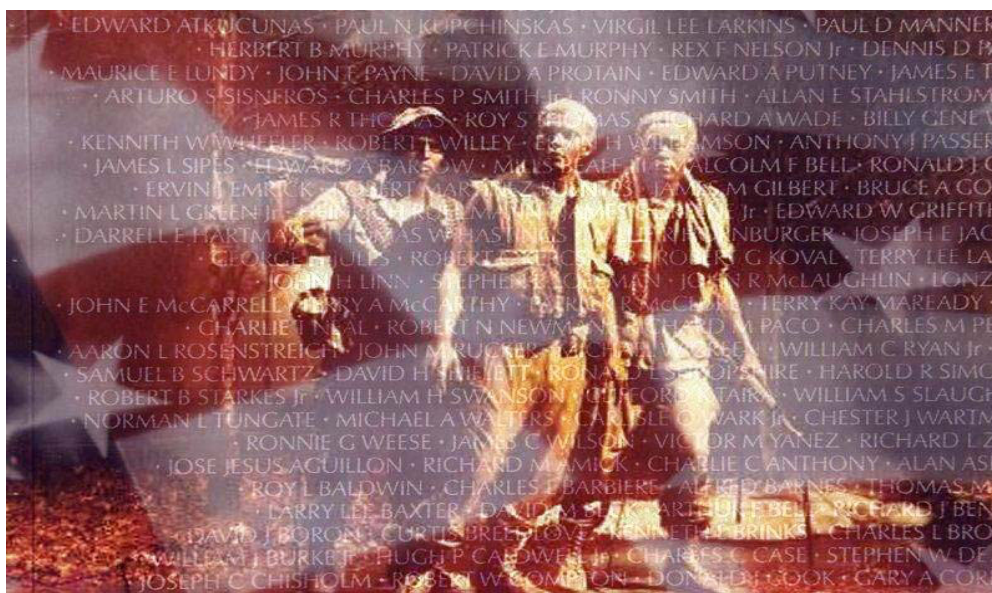
- ◆ Products not listed in the Schedule,
- ◆ Products listed in the Schedule as non- mandatory;
- ◆ Services

For additional information, visit www.govexec.com and/or <http://www.unicor.gov>.



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Graphic by: Lee S. Girard



Upcoming Events

DATE	EVENT/LOCATION
September 20—21, 2006	A Wounded & Injured Veterans Summit on Recovery, Rehabilitation & Employment, Auburn, AL
September 21, 2006	OSDBU Vendor Counseling Session—Vendor Day, Washington, DC
September 21—22, 2006	Veterans Business Journal East Veterans Conference, Hampton, VA
September 22, 2006	SBA Northeastern Regional Business Matchmaking Conference, Philadelphia, PA
September 28, 2006	7th Annual Delaware Procurement Expo, Newark, DE
September 29, 2006	Asian American & Pacific Islander DC Summit, Washington, DC
October 10—11, 2006	2nd Annual Procurement Conference, Charleston, WV
October 11—12, 2006	U.S. Indian American Chamber of Commerce (USIACC), Washington, DC
October 17, 2006	Alliance Small Business Procurement Fair, Jacksonville, FL
October 17, 2006	Government Contracting/Fall 2006 Business matchmaker, South Portland, ME
October 19, 2006	PTAC Small Business Conference, Westchester, NY
October 19, 2006	OSDBU Vendor Counseling Session—Vendor Day, Washington, DC
October 19, 2006	PTAC Small Business Conference, Yonkers, NY
October 24, 2006	PTAC Veterans Conference, Riverside, CA
November 2, 2006	Alliance Small Business Procurement Fair, Chesapeake, VA
November 8, 2006	2006 Small & Disadvantaged Business Opportunity Council (SADBOC) Government Procurement Fair, Brooklyn Center, MN
November 9, 2006	Alliance Procurement Fair, Baltimore, MD
November 9, 2006	Michigan State Veterans Conference, Detroit, MI
November 16, 2006	SBA Southeastern Regional Business Matchmaking Conference, Miami, FL
December 8, 2006	City of San Antonio and Bexar County's Annual Small, Minority & Women Business Owners Conference, San Antonio, TX
February 20—22, 2007	Wyoming PTAC Procurement Conference, Casper, WY

***OSDBU Wishes All VA
Acquisition Activities
a Happy New Fiscal Year!***