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Infotech and the Law | by John Jensen

Ethics, teaming and acquisition strategies will dominate 2005

Technology contractors working with the federal government in 2005 will see several changes in the procurement landscape because of new laws and the scandals of 2004.

♦ **Contractor ethics.** The intense attention on the Darleen Druyun scandal has put the spotlight back on ethics. Defense acquisition regulations require contractors to have a written code of ethics, employee ethics training, a hotline and an audit program.

A recent Defense Department memo requires certain defense officials now certify annually that they have not violated ethics restrictions and to attend ethics training. Contractors should follow suit, revisiting their own internal ethics programs and proactively putting their houses in order.

♦ **Teaming.** Forecasts for computer spending indicate substantial increases over 2004's record purchasing, and large governmentwide acquisition and multiple award contract vehicles will help it happen.

There are procurements worth billions on the horizon, and such larger contracts increase the need for strategic teaming relationships. Carefully developed, well-negotiated teaming agreements, subcontracts and joint venture agreements will be increasingly important.

♦ **Mergers and acquisitions.** Larger contracts feed the business case for acquisitions. One new wrinkle: the Small Business Administration's new rule, effective Dec. 21, requiring recertification of size for any set-aside contracts that will be novated (or for any name changes).

If a target company has any significant small-business backlog, parties to an acquisition may choose to pursue a stock transaction to avoid the FAR novation requirement.

♦ **Small-business joint venturing.** As part of an SBA-approved mentor-protégé rela-

tionship, small businesses and their mentors can participate more effectively in procurements targeted for small and 8(a) companies.

This strategy offers rewards and risks, as each customer may take a different view on joint ventures, which can be traditional partnerships or as limited liability companies.



♦ **Get It Right.** The Abu Ghraib prison scandal focused on the misuse of large GWACs. Out-of-scope orders for interrogation work placed under contracts with Titan Corp. and CACI International Inc. gave rise to the General Services Administration and Defense Department effort called "Get It Right" to ensure contracts are used properly.

Effective Jan. 1, a new policy requires careful review of task orders issued by the Defense Department under the GSA schedule and

other civilian contracts. GSA also said contractors must report out-of-scope orders. Contractors may complain, but they must ride this wave.

♦ **Service-disabled veteran owned small businesses.** A key SBA contract set-aside program will take hold in 2005. To help reach the 3 percent goal, a new rule authorizes sole-source awards and sheltered competitions for these businesses, much like the HUBZone program.

There are already reports of agencies making significant efforts to steer work to service-disabled veteran owned small businesses.

♦ **10-year orders.** This year, contractors can expect to receive longer task orders and delivery orders from the Defense Department, which received authority Dec. 15 to issue orders that may extend for up to 10 years, up from a five-year cap.

♦ **A-76.** These outsourcing awards soon may be subjected further to the protest process. On Dec. 20, the Government Accountability Office issued a proposed rule, based on a recent statute, that would amend the definition of an "interested party" to allow protests by the official responsible for submitting the federal agency tender.

♦ **Share-in-savings contracts.** New regulations that expand and define the use of share-in-savings contracts may be issued early this year. These contracts let agencies enter into deals with minimal appropriations, with the contractors financing the purchases and earning savings that accrue from their efforts. Rep. Tom Davis (R-Va.) is expected to reintroduce legislation promoting these contracts.

John Jensen co-chairs the government contracts practice at Pillsbury Winthrop Shaw Pittman LLP in McLean, Va. He can be reached at john.jensen@pillsburylaw.com.



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