



COMMITTEE ON GOVERNMENT BUSINESS

May 3, 2013

DASN(AP)
Attn: Clarence Belton
1000 Navy Pentagon
Room BF992
Washington, DC 20350-1000

Subject: Proposed DoN SSIP Policy Letter

Dear Mr. Belton,

Financial Executives International's ("FEI") Committee on Government Business ("CGB") appreciates the opportunity to provide comments on the Proposed Policy Letter that will establish a Superior Supplier Incentive Program ("SSIP") for the Department of the Navy.

FEI is a professional association representing the interests of more than 15,000 chief financial officers, treasurers, controllers, tax directors, and other senior financial executives from over 8,000 major companies throughout the United States and Canada. FEI represents both the providers and users of financial information. CGB formulates policy opinions on government contracting issues for FEI in line with the views of the membership. This letter represents the views of the Committee on Government Business.

Members of the CGB have reviewed the Council of Defense and Space Industry Association's (CODSIA) comments on the Superior Supplier Program that were submitted on 30 July 2010 (See attached). Those members concur with the positions and recommendations that were submitted by CODSIA. Rather than reiterating the points discussed in the aforementioned comment letter, we offer additional commentary that is focused specifically on identifying incentives that would truly motivate suppliers to achieve and maintain a Superior Supplier designation.

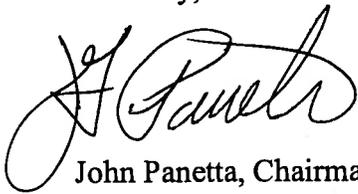
While the three terms and conditions incentives listed in the public notice are favorable to the supplier, the actual benefit received could be very limited and is dependent upon the types of contracts being performed. For example a supplier with a large portion of its base composed of fixed price contracts financed by performance based payments would only benefit from the potential for less frequent business systems reviews. While the potential for less frequent business system reviews is favorable, the value is difficult to quantify and other factors beyond the control of the Navy could prevent the supplier from actually receiving the benefit earned. In order for the program to succeed the incentives offered for superior performance must provide a real, quantifiable benefit of economic value to the supplier. As such we would urge the Navy to provide the program and its contracting officers with a broader selection of options that provide real incentives in a wide range of contracting situations. The list below contains a series of contracting options that would provide economic incentives for suppliers to achieve and maintain a Superior rating.

- 1) Authorization for suppliers to invoice contract financing payments on a more frequent basis than permitted by regulation. If this option was offered, the administrative impact could be minimized by limiting the authorization to programs/contracts of significant value.
 - a. FAR 52.216-7 (Allowable Cost and Payment) currently limits invoicing of Cost Type contracts to not more often than once every two week. We recommend an option that would allow Superior suppliers to invoice significant cost type programs on a weekly basis.
 - b. FAR 52.232-16 (Progress Payments) currently limits invoicing of financing requests to not more frequently than on a monthly basis. We recommend an option that would allow Superior suppliers to invoice significant progress payment programs on a bi-weekly basis.
- 2) Authorization for suppliers to eliminate or reduce the value of fee withholds required by three FAR clauses listed below.
 - a. FAR 52.216-8 (Fixed Fee) requires suppliers to withhold 15% of the total fixed fee of the contract or \$100,000, whichever is less to protect the Government's interest.
 - b. FAR 52.216-10 (Incentive Fee) requires suppliers to withhold 15% of the total incentive fee of the contract or \$100,000, whichever is less to protect the Government's interest.
 - c. FAR 52.232-7 (Payment under Time-and-Materials and Labor-Hour Contracts) requires suppliers to withhold the lesser of 5% of amounts due or \$50,000 to protect the Government's interest.
- 3) Exemption from the new AT&L Better Buying Power requirement to provide consideration for Performance Based Payment Financing, or set the level of consideration required equal to the USG cost based on the OMB A-94 Nominal Discount Rate.
- 4) Authorization for suppliers to receive FAR 13.4 Fast Payment processing on contracts that would not ordinarily qualify for, or would require special agency approval of, the accelerated payment cycles.
- 5) Authorization for contracting officers to provide suppliers with unusual progress payment rates up to 99% of incurred cost on contracts that would not otherwise qualify for unusual financing under the requirements established by FAR 32.501-2 (Unusual Progress Payments).

- 6) Authorization for contracting officers to establish Alternate Liquidation Rates (FAR 32.503-9) at the time of contract award based on negotiated fee rates.

We appreciate your consideration of our recommendations and welcome the opportunity to discuss any and all related matters. I and other CGB members would be pleased to meet with you or your staff should you have any questions or wish to discuss these recommendations further. Feel free to contact Robert Kramer our FEI representative in Washington at 202.626.7804, to arrange such a meeting. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Panetta". The signature is fluid and cursive, with a large initial "J" and "P".

John Panetta, Chairman
Financial Executives International
Committee on Government Business

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
4401 Wilson Boulevard, Suite 1110
Arlington, Virginia 22203
703-875-8059
codsia@pscouncil.org

July 30, 2010

DASN (A&LM)
Attn: Clarence Belton
1000 Navy Pentagon, Room BF992
Washington, D.C. 20350-1000
Via email: preferredsupplier@navy.mil

Ref: Navy Proposed DON Policy Letter: Preferred Supplier Program

CODSIA Case 10-10

Dear Mr. Belton:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA)¹ appreciate the opportunity to comment on the Navy's proposed policy letter establishing the Navy Preferred Supplier Program (PSP), published in the Federal Register on May 24, 2010.

According to the Federal Register notice, under the PSP, contractors that have demonstrated exemplary performance at the corporate level in the areas of cost, schedule, performance, quality, and business relations would be granted Preferred Supplier Status (PSS). Contractors that achieve PSS would receive more favorable contract terms and conditions in Department of Navy contracts.

The notice also acknowledges that the proposed policy letter is "still in the conceptual phase" and that after considering the comments, the Navy "may publish a draft policy letter for additional public comment." In addition, even if adopted, the notice often refers to an intended "pilot phase" for implementation. We compliment the Navy for outlining the broad objectives of and approaches to the proposed PSP outlined in the notice and for soliciting public comments at this concept phase. If implemented reasonably, fairly and consistently, many of our member associations would support the

¹ CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues, at the suggestion of the Department of Defense. CODSIA consists of eight associations – the Aerospace Industries Association (AIA), the American Shipbuilding Association (ASA), the Associated General Contractors of America (AGC), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), the American Council of Engineering Companies (ACEC), TechAmerica, and the U.S. Chamber of Commerce. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

proposed Preferred Supplier Program. This initiative could raise the bar for quality and could reduce or eliminate poor quality contractors from receiving future awards. However, given the significant questions the Navy has posed and the concerns industry has with both the opportunities and challenges in the presented by the proposed PSP, we strongly encourage the Navy to publish any draft policy letter for further public comment before initiating the program. We also strongly endorse the Navy's stated intent to cautiously implement any such PSP through a pilot program. A pilot program approach will properly test the core elements of the PSP and help determine whether the anticipated advantages of the PSP can be achieved without creating more disadvantages.

Stackley June 8 Memo

The Federal Register notice outlines key elements of the PSP. Before addressing those concepts, we believe it appropriate to comment on the June 8, 2010 memorandum from Assistant Secretary of the Navy (RD&A) Stackley, titled "Aligning Department of Navy Contracting Practices." One element of that Stackley memo is titled "Preferred Suppliers." While that memo was not published for comment, we note that many of its elements reflect requirements already in the Federal Acquisition Regulation (FAR) and related DoD policies and operating procedures. Many of the approaches adopted in the memo were previously recommended but failed because of past internal DoD actions or changing priorities. Other approaches failed because they increased acquisition lead-time or created additional administrative burdens on the acquisition system. Certainly some failed because of contractor actions.

Before it addresses preferred suppliers, however, the Stackley memo addresses four other contracting practices that are "fundamental to incentivizing contractor performance:" (1) competition; (2) limits on the use of cost reimbursement contracts; (3) contract incentives; and (4) contract terms and conditions. Each of the Stackley memo practices must be approached on a solicitation-by-solicitation and contract-by-contract basis, whereas the underlying premise of the proposed PSP is to identify incentives applicable "at the corporate level." Thus, reconciling the Navy policy approach of contract-by-contract incentives with corporate-level incentives will require special attention and flexibility, as well as a clear statement from the Navy as to which approach has priority in the event there is any inconsistency.

Significantly, the Stackley memo highlights that the Contractor Performance Assessment Reporting System (CPARS) will be a "partial, but important, determinant in assessing a contractor's preferred supplier status." Stackley reminds Navy officials that "it is important that program managers ensure CPARS evaluations are consistent with actual contract performance and strictly adhere to CPARS guidelines." We support this reinforcement statement and recommend that it be carried over into any PSP. Many members experience inconsistencies in preparing and issuing CPARS ratings within the same contracting organization, let alone across Navy commands.

PSP Concepts

The Federal Register notice outlines several key concepts of the proposed policy letter.

1. DASN (A&LM) shall be responsible for the assessment of contractors under the PSP

This concept states that PSP status will be conferred only at the corporate level and will not rate individual affiliates or subdivisions of corporations. We believe the guidance should address how the Navy will treat joint ventures and other business combinations when making the assessment.

While the premise of assessing contractors at the “corporate level” has merit, there are also significant counterbalancing concerns that must be considered. For example, it is unclear whether the Navy PSP would be evaluated only against active Navy contracts being performed, or whether it will cover any contract awarded over some past period of performance. Will it be applied against all contracts a company has with just the Navy or will contracts with other DoD organizations, or non-defense government agencies, be considered? A small business with a limited portfolio of contracts could also be significantly disadvantaged in its ability to enter or remain in the PSP if one of its limited number of contracts is being performed only “satisfactorily.”

Assessing contractors at the “corporate level” may be challenging for the Navy where contracts are awarded to separate subsidiaries of companies as the contracting legal entities and the CPARS evaluations are made on those subsidiary legal entities. Furthermore, the Navy could be adversely affected by potentially being unable to award a specific business opportunity to the firm most qualified to perform the contract. PSP must also be carefully weighed against the Stackley memo’s focus on “maximizing competition as appropriate for the warfighter and the taxpayer.”

In addition, many contractors have dozens (or even hundreds) of Navy contracts and task orders in various phases of solicitation and active performance. Some of these contracts are of significant dollar value or present known technological or other risk. Some contracts (and particularly task orders) could have a short window for performance, while others (such as shipbuilding contracts) span years of performance. Some contractors hold both short and long-term contracts. As a result, it is likely that current Navy contractors, despite the diligence at the corporate level, could have a small number of contracts that have perceived or actual performance issues. It is unclear how the Navy will evaluate a corporation with excellent performance over the vast majority, but not all, of its Navy contracts.

Since a wide range of companies could be evaluated under the program, the PSP policy must also take into account, and be consistent with, the special contracting requirements for architects and engineers under the Brooks A/E Act, where source selection is based on qualifications for a specific effort.

While there are numerous approaches available, we strongly recommend that the PSP be applied only against active Navy contracts with CPARS ratings over the past three years since the Navy will only have the authority to include favorable terms and conditions for Navy-approved PSPs in future Navy solicitations and resulting contracts.

In addition, despite the statement that PSS will not be used as a source selection factor, the intended inclusion of “favorable terms and conditions” for a PSS firm could be a competitive discriminator in a specific solicitation. Similarly, it is incumbent upon the Navy to carefully monitor significant award determinations to identify whether long-standing incumbents are continuing to win business even if not a designated PSS. To the extent appropriate once the PSP is put into place, Navy contracting officers should internally document to A&LM the best value determination when a decision is made to make an award to other than a PSS.

If for any reason a contractor should be unable or unwilling to retain its PSS in a subsequent year, the policy guidance is silent on the impact such an action could have on its previous status, including any special contract terms and conditions that may have been entered into. In our view, the policy letter should affirmatively state that any contractor that fails to achieve PSS should receive a meaningful debriefing regarding their deficiencies and be provided an opportunity to improve their performance over a reasonable period of time. In addition, the policy letter should affirmatively state that any contractor who drops its PSS rating in any given year will be able to continue to perform existing work under the previously established, corporate-wide, terms and conditions, but not be eligible for such benefits in future awards first solicited after leaving the PSP.

2. DASN (A&LM) shall use the CPARS as the baseline data

There is a wide variation in the number, nature and scope of contracts that the top 25 Navy suppliers have been awarded, let alone comparing all Navy contractors. Shipbuilding contractors have different challenges than information technology or other services suppliers. This portion of the concept description notes that the DON (we assume A&LM) will use other sources of information and weighting factors. Some of these other sources of performance already exist and there are clear due process standards applicable to them for both government officials and contractors. Those procedural protections must be preserved when applied to this program. However, use of such a subjective approach raises concerns about how the Navy will ensure consistency and uniformity in the application of the PSP ratings across such a wide range of company organizations and Navy contract performing entities. We strongly recommend that this rating system be held accountable through some form of internal Navy independent administrative appeal process for adverse decisions, possibly to the Navy’s Competition Advocate or Ombudsman.

Finally, as noted above, we assume that the Stackley comment of “strict adherence” to CPARS guidelines includes the requirement that contracting officers provide any proposed evaluation to the contractor for review and comment and that the contractor is specifically authorized to have any comments included in the CPARS system.

3. DASN (A&LM) will assess “Energy Efficiency” for all contractors

It is appropriate to measure an energy efficiency program at the corporate level and a life-cycle analysis for individual products should not be assessed as part of a firm’s energy efficiency program. In addition, the Navy must determine whether your Energy Efficiency Program will be measured quantitatively or qualitatively. If a quantitative approach is taken, the program should measure greenhouse gas (GHG)

emissions. GHG emissions are specifically called out for measurement and reduction in President Obama's Executive Order 13514, although the specific application of such standards are still being determined based on the April 2010 preliminary recommendations from the General Services Administration issued pursuant to Section 13 of that Executive Order.

4. Navy will use 5-star rating system

Given the broad range of purchases the Navy makes, developing a consistent application of the system used to rate companies will be a significant administrative challenge for the Navy and is a source of concern for many of our member associations and their companies. For example, a significant number of Navy awards are for development, which imposes performance challenges that are far different from the purchase of commodities such as fuel or food. Even the acquisition of services covers a wide range of contracting efforts – from engineering support to information technology, and from shipbuilding to quality-based architect-engineering efforts.

In addition, we recommend that once a company is given PSS, the company should be allowed to state in the past performance (or other appropriate) section of a solicitation that the company has been designated as such for the current (or some past) period and be authorized to simply reference those programs that are under the umbrella of the PSP without having to repeatedly restate and further document PSP program involvement.

In addition, the Navy should provide the criteria for entry into the PSP so that companies not in the PSP have the opportunity to address the metrics in appropriate solicitations.

5. DASN (A&LM) will rate top 25 contractors each fiscal year

The proposed policy letter indicates that the Navy will, on its own initiative, "reassess and rate" the top 25 Navy contractors, based on the value of contract awards in the past year. Given the variable nature of the solicitation and award process, the Navy should consider as an additional criterion for determining its top contractors the dollar value of business already under contract. By using both measures, the Navy should capture the most significant Navy contractors over a rolling period of time and be in a better position to recognize and reward a company's exemplary current performance when making awards for new work.

The proposed policy letter also indicates that companies other than the top 25 may apply annually for admission to the program within a 30-day window beginning no later than January 1 of each year. While we strongly support the need for an open application process, several considerations must be addressed. First, will the application and evaluation criteria be clear and provided to all interested parties in advance? How will the Navy evaluate a firm that has no CPARS ratings (i.e. because they are a new-to-market competitor)? What will be the impact on a small business that may not be in a financial position to implement specific energy efficiency or other PSP program components? Will the Navy have the resources to provide timely evaluation and responses to the influx of applications from potentially hundreds of primarily small and mid-tier businesses that will want to be designated a PSP? A gap in any of these areas will undercut the necessary legal and business foundations for a Navy PSP.

6. DON may use favorable contract terms and conditions

Regardless of how the determination of eligibility for a PSP is made, the program must be structured to actually give preferred supplier terms that are more favorable than those to which the contractor would otherwise be entitled. Furthermore, clear guidance must be given to contracting officers not to counterbalance PSP favorable terms and conditions by offering less-favorable terms in other areas.

Other Federal Preferred Supplier Programs

We are aware of other preferred supplier programs in the Department of Defense and in other federal agencies. For example, the Defense Logistics Agency has long had a Preferred Supplier Program that has proven successful in expediting services, particularly in the maintenance, repair and operations area, but sometimes proven less so than others. Numerous DoD program, DoD IG and Government Accountability Office reviews have documented the successes and limitations of this DLA program and may serve as a source of "better practices." In addition, strategic sourcing programs, a form of a preferred supplier program, are being used by many DoD activities, as well as on a government-wide basis, for certain commodities and services.

There are also preferred purchasing programs for certain information technology programs such as EPEAT or Energy Star products, as well as for certain categories of offerors, such as Ability One. Any Navy PSP design must address how these other preferred supplier programs will relate to the Navy program.

However, each of these initiatives must be carefully weighed against the statutory requirements for full and open competition under CICA and for "fair opportunity" for task and delivery orders under IDIQ contracts. In addition, these initiatives must be balanced against the laudable goal of expanding opportunities for small business participation.

Conclusion

We compliment the Navy for considering ways to incentivize exemplary program performance and for publishing the request for comments. We strongly encourage the Navy to publish any draft policy letter for further public comment. We also strongly endorse the Navy's stated intent to cautiously implement any such PSP through a pilot program. Such an approach will properly test the core elements of the PSP and help determine whether the anticipated advantages of the PSP can be achieved without creating more disadvantages.

In addition, on June 28, 2010, Under Secretary of Defense (AT&L) Ashton Carter issued a memorandum for DoD acquisition professionals, as part of the Under Secretary's "Efficiency Initiative." One implementing strategy in that memo proposed to adopt this Navy initiative across DoD. Given our concerns with the limited information available about this Navy PSP and how the PSP might be implemented, we are also providing these comments to Mr. Brett Lambert, the department's Director of Industrial Policy, who serves as the department's point of contact for industry comments on the

Efficiency Initiative. It is our recommendation that these concerns be addressed before any wider implementation of a preferred supplier program occurs.

Finally, on July 23, 2010, the Aerospace Industries Association submitted separate comments on the PSP. We endorse those comments.

Thank you for your consideration of these comments. We welcome the opportunity to meet with you and other Navy officials to discuss these comments and related issues before further action is taken on this proposed policy letter. In the interim, if you have any questions or need any additional information, please contact the CODSIA project officer, Alan Chvotkin, Executive Vice President and Counsel of the Professional Services Council, at chvotkin@pscouncil.org or (703) 875-8059 or Bettie McCarthy, the CODSIA Administrative Officer, at 703-875-8059.

Sincerely,



Alan Chvotkin
Executive Vice President & Counsel
Professional Services Council



R. Bruce Josten
Executive Vice President – Government Affairs
U.S. Chamber of Commerce



Richard Sylvester
Vice President, Acquisition Policy
Aerospace Industries Association



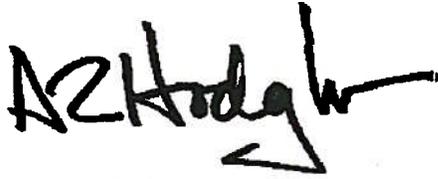
Cynthia Brown
President
American Shipbuilding Association



Peter Steffes
Vice President, Government Policy
National Defense Industrial Association



Richard L. Corrigan
Policy Committee Representative
American Council of Engineering Companies



A.R. "Trey" Hodgkins, III
Vice President, National Security &
Procurement Policy
TechAmerica



Marco Giamberardino
Senior Director, Federal and Heavy
Construction Division
Associated General Contractors of America

CC: Brett Lambert (OSD/AT&L/IP)