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Agencies Float Rule For Detailed Contractor Reporting

By Martin Bricketto

Law360, New York (April 22, 2011) -- Federal agencies moved forward Wednesday with a proposed rule that would require certain service contractors to meet new reporting requirements as part of a broader effort to strike a balance between contractor and in-house services.

The rule would require service contractors performing work exceeding a certain threshold for executive agencies other than the U.S. Department of Defense to electronically report a variety of information on a yearly basis, from dollar totals for invoices to direct-labor hours for first-tier subcontractors, according to a notice in the Federal Register issued by the DOD, U.S. General Services Administration and NASA.

The reporting requirement would take effect in fiscal year 2011 and be subject to a phased-in approach during a four-year period based on contract type and dollar amount, according to the notice. The reporting threshold for fixed price contracts would initially be \$5 million but eventually go down to \$500,000 for fiscal year 2014.

The proposed rule would amend the Federal Acquisition Regulation and help implement part of the Consolidated Appropriations Act of 2010 dealing with agency-level inventories for service contracts.

The act requires agencies covered by the Federal Activities Inventory Reform Act of 1998, except the DOD, to submit an annual inventory of service contractor activities to the Office of Management and Budget by Dec. 30, according to the notice, which says the DOD is already required to develop an annual inventory of service contracts.

The goal of the inventory is to help federal agencies determine if they have the right balance of contractor and in-house resources to accomplish their missions, and the agencies are required to review the contents of the inventories and report on any actions taken, the notice says.

Certain data elements have to be collected from service contractors, according to the notice. Under the proposed rule, contractors would have to submit multiple data elements for covered contracts or orders in a given fiscal year by Oct. 31.

Those data elements include the contract or task order number, the total dollar amount invoiced for services performed during the previous fiscal year under the contract, the number of contractor direct-labor hours and certain subcontractor data, according to the notice.

By Oct. 15 of each year, prime contractors would have to obtain direct-labor hours from each first-tier subcontractor under a covered contract, the notice says.

The agencies said they tried to limit the burden of the new requirements on small businesses by cutting down on data elements being collecting by using existing information systems, calling for the submission of the reports on an annual basis and enabling electronic reporting by the contractor into a new portal. No hard copy reporting is expected.

The agencies also said that, to further soften the impact of the requirements, contractors were only obligated to provide direct-labor hours, while the government would automatically generate the number of full-time equivalents based on that information.

Comments on the proposed rule are due by June 20.

Requirements that are initially applied in DOD contracting often find their way over to civilian agencies, according to John A. Howell, a partner with Sullivan & Worcester LLP and head of its government contracts and grants group.

Howell said the requirements could be burdensome on smaller businesses that contract on a fixed-price basis who may now have to track their labor hours for the first time.

Stan Soloway, president of the Professional Services Council, which represents government professional and technical services providers, said the requirements aren't a top tier concern for his organization, but added that the burden of meeting such regulations raises questions about the value of the information.

"It's not clear to me exactly how it will be used in a beneficial way to justify the costs and resources going into it," Soloway said.

A GSA representative did not immediately return a request for comment Friday.

--Editing by John Williams.
