

ALERT

DOD Proposes Streamlining Awards for Certain Small Businesses and “Nontraditional Defense Contractors”

August 30, 2016

WHAT: As part of its efforts to encourage “nontraditional defense contractors” to do business with the Department of Defense (DOD), DOD issued a proposed rule today that would exempt certain companies from certified cost and pricing data requirements under research and development contracts. Styled as the “Pilot Program for Streamlining Awards for Innovative Projects,” the rule would apply to contracts and subcontracts valued at less than \$7.5 million awarded to small businesses or “nontraditional defense contractors” pursuant to (i) a broad agency announcement for the acquisition of basic and applied research (see FAR 35.016), or (ii) the Small Business Innovation Research (SBIR) Program. The proposed rule would also eliminate the records examination requirement for the relevant contracts and subcontracts. The newly added term “Nontraditional defense contractor” will be defined as “an entity that is not currently performing and has not performed any contract or subcontract for DOD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the one-year period preceding the solicitation of sources by DOD for the procurement.” If enacted, the exceptions will be in place until October 1, 2020.

WHEN: DOD issued the proposed rulemaking on August 30, 2016. Comments on the proposed rulemaking are due October 31, 2016.

WHAT DOES IT MEAN FOR INDUSTRY: Like the Defense Innovation Unit Experimental (DIUx) initiative, the proposed rule is another example of DOD’s effort to encourage innovative technology companies to do business with DOD. If the proposed rule is enacted,

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Practice Areas

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small businesses and “nontraditional defense contractors” will be relieved of certified cost and pricing data and records examination requirements under certain R&D contracts. Interested parties, including contractors that believe this exception should be applied more broadly, should review the proposed rulemaking and submit comments where their interests are affected.