

## Minority Views

### H.R. 8014, the “Transparency and Predictability in Small Business Opportunities Act”

Once a federal agency determines they have a need for certain products or services, the agency’s acquisition personnel will post a solicitation on the federal government’s SAM.gov website for a contract to fill the requirements. This solicitation will identify what the agency intends to buy, the procedures they will use to do it, and a deadline for companies to submit bids or proposals.

When responding to a solicitation, small businesses can spend significant time and costs to prepare a proposal. In his written testimony submitted for a House Small Business Committee hearing on February 6, 2024, entitled: “Under the Microscope: Reviewing the SBA’s Small Business Size Standards,” Andrew Christ stated:

*“Traditionally, the process of putting in a solicitation response is very costly. The requirements for the solicitation responses continue to expand and... it requires a small business to expend a significant amount of money to develop a detailed proposal submission. On average, our proposal responses cost approximately \$10,000.00 worth of labor to draft, develop, review, and execute. This is a substantial expenditure for a small business.”<sup>1</sup>*

On September 8, 2021, the Department of Defense published a request for comments in the Federal Register (Vol. 86, No. 171), entitled “Barriers Facing Small Businesses in Contracting with the Department of Defense.” In their response listing the barrier small defense contractors face, the U.S. Women’s Chamber of Commerce highlighted the “Numerous small business contracts that just go away without explanation or discussion with the OSDBU.”<sup>2</sup>

There are separate rules based on different types of procurements and reasons for cancellations but once a solicitation is issued, federal agencies have broad discretion to amend or cancel it. An agency needs to have a reasonable basis to cancel a solicitation and provide basic justifications, and there are currently rules around procedures that agencies must use to do so.

The reasons agencies may cancel solicitations can vary widely. There are circumstances where the solicitations have been modified, usually as a result of corrective actions, to the extent that it is simply easier to start over. Agencies will cancel and then reissue the solicitation for the same work, rather than amend the existing solicitation. Other times, requirements have changed, the work is no longer necessary, or the agency will procure the same work in a different way.

Additionally, issues can arise because of budget changes—including budget uncertainty caused by continuing resolutions or lapses in appropriations—or the funding for the contract being

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<sup>1</sup> Written Statement of Mr. Andrew V. Christ, Chief Operating Officer, Compass Constructors, on behalf of American Subcontractors Association, before the House Committee on Small Business. “Under the Microscope: Reviewing the SBA’s Small Business Size Standards.” February 6, 2024:

<https://docs.house.gov/meetings/SM/SM00/20240206/116800/HHRG-118-SM00-Wstate-ChristA-20240206.pdf>

<sup>2</sup> U.S. Women’s Chamber of Commerce, comments published on October 11, 2021 in response to the Department of Defense’s Notice of Request for Public Comments on “Barriers Facing Small Businesses in Contracting with the Department of Defense:” <https://www.regulations.gov/comment/DOD-2021-OS-0077-0136>.

solicited is no longer available. The unpredictable and changing federal budget climate is always a challenge for small businesses. In his prepared statement for the February hearing Mr. Christ, referring cancelled solicitations, stated: *“As of late, the instability and ambiguity caused by CRs make it difficult for federal agencies to have certainty on funding for projects... it can create a situation where the business spends a significant amount of money to develop a proposal response, only to find out that the project has become inactive.”*

Generally, when an agency cancels a solicitation, the reasons can be unknown to offerors and there are no universal requirements that the agency provides any information either to the public or to the companies that have provided an offer. Agencies do not have to disclose the reasons and/ or plans which can be frustrating and harmful for small businesses who have sunk costs into their proposal preparation and response.

In addition to improving transparency and accountability, if agencies disclosed additional information regarding the reasons behind a cancelled solicitation, small businesses who put together costly bids would have additional information to amend their business strategies and plan for future bids.

The legislation will also add to the duties of each federal agency’s Office of Small & Disadvantaged Business Utilization (OSDBU) to require they assist small businesses who have prepared a bid for a cancelled solicitation with finding additional contracting opportunities.



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