Contracting Challenges for Navigation Work

AAPA Harbors and Navigation Committee
September 28, 2018
Navigation Work Impacts
Dredging and Dredged Material Management

• Previous law had exception for historically combined work
• New law was intended to help small business, viewing consolidated contracts as being used to avoid using small business. Corps Districts are experiencing unintended consequences, for example:

• Small Disadvantaged Business (8a) contracts for disposal area management. New law requires site specific d/a management contracts or keep the contract amount below $2M. Past practice was competitive 8A contracts up to $30M, for 5 years for d/a management.

• New law requires approvals for consolidation on large dredge contracts, which are getting approved based on mobilization cost savings. HOWEVER, this approval process is adding 6-8 months to the dredge contract development time. Fastest approval has taken 4 months.
The Law, 15 USC 657(q)
Consolidation of Contract Requirements

(c) Limitation on use of acquisition strategies involving consolidation

(1) In general The head of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than $2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

(A) conducts market research;

(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;

(C) makes a written determination that the consolidation of contract requirements is necessary and justified;

(D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and

(E) ensures that steps will be taken to include small business concerns in the acquisition strategy.
Proposed Remedies – in order of preference

1. Under Definitions Para 2 (B) - Delete entirely - this will exempt all construction projects from this requirement.

2. Under Definitions Para 2 (B) - add in parenthesis (excluding dredging and related disposal and disposal management activities)

3. Under Definitions Para 2 (B) - add "unless historically combined" - This will restore past practice, although approval required for new requirements

4. Under 3 (c) (1) - increase the $2 million floor. The higher the better, but at least $4 million, which matches the sole source 8a limit
Other Issues, Concerns