

In our last article, we asserted that the FAR Councils were “years behind” in implementing regulatory rule changes promulgated by the Small Business Administration (SBA) in the Federal Acquisition Regulation. For those that may not know, the SBA promulgates its rules in Volume 13 of the Code of Federal Regulations (CFR) but the FAR is found in Volume 48 of the CFR. Each carries equal regulatory weight, except that it is the FAR Part 48 contract clauses that, by and large, end up in government contracts. Thus, it’s important that the FAR Councils work hard to keep 48 CFR Part 19 (“Small Business Programs”) consistent with what the SBA is saying over at 13 CFR. They haven’t done their jobs.

Evidence for our assertion can be provided. For one recent example, check out CAAC Letter [2019-1](#)

. Again, for any readers that may not know, the Civilian Agency Acquisition Council is one of the two Councils that make up the group that maintains the FAR and issues regulatory revisions (the other is the Defense Acquisition Regulation Council)—collectively known as the “FAR Councils.” For those that want to know more about these groups, here’s

[a link](#)

to FAR 1.201.

Anyway, let’s discuss CAAC Letter 2019-1. It authorizes (civilian) agencies to “implement regulatory changes made by the Small Business Administration to limitations on subcontracting in its final rule published in the Federal Register at 81 FR 34243 on May 31, 2016.”

Stop right there. Read the date on which the SBA published its final rule.

That’s right. It was nearly *three years* ago.

And since that time, crickets from the Councils whose job it is to align the FAR with the rest of the Code of Federal Regulations.

Nice job there, folks.

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Written by Nick Sanders

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Meanwhile, “Agencies are advised to review any relevant clauses in their supplement and take any action that is appropriate. Once processed, agencies are requested to share the deviation widely among their workforces to ensure full awareness of and compliance with the revisions to the limitations on subcontracting.”

Meanwhile, “It is recommended that the deviation be made effective until the FAR is amended by the FAR case.” You know, that same FAR Case opened in 2016 that hasn’t actually been finalized yet. So in the meantime, just keep on deviating from the FAR in order to implement the rules and regulations of our sister agency at SBA. Because ... the rule-making machinery isn’t working well today—nor has it for the past three years.

Onto a related topic: Small businesses and innovation.

Innovation is something we’ve written about before. Many times. (Do a keyword search from the home page.)

A [recent article](#) posted at DefenseNews.com (by Jill Aitoro) got us thinking. Ms. Aitoro’s article reiterated a “Twitter storm” by Trae Stephens, a former employee of Palantir Technologies and, more recently, co-founder of Anduril Industries, a company in Orange County, California, “created by tech innovators on a mission to solve critical defense problems, Anduril’s business model brings Silicon Valley ingenuity and funding to defense.” (According to the company’s website.)

Mr. Stephens apparently was responding to comments from Ellen Lord (Under Secretary of Defense for Acquisition and Sustainment) in which she “expressed concern ... with the ability of innovative small businesses to secure their [information] systems.” Mr. Stephens took issue with those comments. He asserted that “This is yet another example of the common misuse of the term ‘small business’ across the Department of Defense.”

The comment that got us thinking though, was this: “There is a huge difference between a low-growth/low-headcount business and a high-growth/product-focused tech startup. We need to stop lumping these together.”

In other words, not all small businesses are the same! Treating every small business as being the same ignores the fact that some small businesses are not high-tech, innovation-focused entities. They are the traditional “mom-and-pop” businesses that, so often, supply machining and finishing services. (That’s not to say that those entities don’t innovate; but they are innovating “within the box,” so to speak.) In contrast, other small businesses are high-tech, focused on disruptive innovation. Those are the small businesses that will drive the future of defense.

Mr. Stephens discussed the recent USAF “[pitch day](#)” in which some small businesses received SBIR contracts in less than 15 minutes, simply based on their pitches. That’s a great thing! But Mr. Stephens pointed out that more than 50% of the companies invited to the “pitch day” lacked venture capital funding. He also noted that the contracts awarded were “non-recurring and average less than \$100,000” in value. Ms. Aitoro reported that he also stated in an interview that “In addition, most contracts were for cyber and services – not product development. Not to diminish the importance of cyber and services, but were those contracts breaking new ground? The work could probably be performed by any number of companies.”

Moreover, he noted, Northern Virginia companies outnumbered California companies by three-to-one, and that “almost half” the companies at “pitch day” were founded more than 10 years ago. Ms. Aitoro reported that he amplified on his Tweets with the statement that those companies were “not exactly the definition of a ‘Silicon Valley startup.’ Now, innovation is not isolated to California, but it appears the winners here follow[ed] a pretty standard playbook for Pentagon small business contractors in both the scope of work and the makeup of the businesses.”

In other words, according to Mr. Stephens, the companies at the USAF “pitch day” were largely run-of-the-mill small Pentagon contractors that were not very likely to be the high-tech innovators that DoD says it’s looking for. He summed up his position thusly: “... an alien race looking down would reasonably think that it is the official policy of the U.S. government to encourage small businesses to not become large or successful businesses.”

He also said: “If you’re serious, prove it. Innovation theater is great (and easy), but we need to start writing meaningful contracts to new entrants with the skills/technologies that the DOD lacks.”

In related news, the Small Business Administration has announced its “SBIR Road Tour” with

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the goal of “seeding America’s future innovations”™. Let’s look at the [planned stops](#) on the Road Tour.

Oh, look. There are no stops planned for California. None for Oregon or for Washington.

Hmm, guess there are no small business innovators located in those states ...

Meanwhile, the Silicon Valleys of Kansas, Oklahoma, South Dakota, and North Dakota each get a stop on the tour.