

Aeronautical Systems Center

Dominant Air Power: Design For Tomorrow...Deliver Today



ASC Small Business Office
23 May 2006

U.S. AIR FORCE

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Items of Interest



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- **Size Recertification**
- **Limitation on Subcontracting**
- **Teaming**
- **Source Selection of Small Business Participation**
- **Role of the Small Business Office**
- **Questions**





Size Recertification



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- **Should SBs recertify size at time of issuance of orders under multiple award ID/IQs?**
 - SBs grow to be LB under large MAC ID/IQs
 - Historically, a SB was considered small for the life of the ID/IQ contract; recent rulings have allowed recertification at time of order issuance
- **Recent Case at OO-ALC**
 - Original MAC ID/IQ awarded 2001 (5SB, 6 LB, 15-year contract)
 - SBSA in 2005; asked companies to recertify
 - SB did not recertify; used original certification of SB status
 - Hill CO appealed to SBA
 - SBA Philadelphia: size status is small based on original cert
 - SBA OHA overturned; SB not small for this procurement
 - Hill awarded to next low acceptable SB
 - SB protested award; sought injunctive relief
 - U. S. Court of Claims Ruling
 - AF within rights to recertify
 - Agreed with SBA OHA: underlying contract is framework for future competition for contracts
 - Task order constitutes new procurement
- **Concern: if no policy exists, no consistency concerning recertification among various buying offices**



Size Recertification



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- **Current Regulations**

- **13 CFR 124.503(h) - re: 8(a) Program:**

“Unlike Basic Ordering Agreements, Multiple Award and FSS contracts are contracts. Orders issued under these contracts are not considered separate contracts.” Subpara (2): “A concern may continue to accept new orders under a MA or FSS contract even where...the concern becomes other than small for the SIC code assigned under the contract subsequent to award of the contract.”

- **13 CFR 121.404**

Subpara (a) SBA determines the size status as of the date the concern submits a written self-certification that it is small as part of its initial offer which includes price.

Subpara (g) A concern that qualified as a SB at the time it receives a contract is considered a SB throughout the life of that contract.



Size Recertification



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- **Recent Rulings**
 - SBA OHA (SIZ-4477, SETA Corp and FEMA, March 2002)
 - RFQ issued against GSA FSS
 - RFQ is a new procurement; RFQ is correct time to establish size
 - GAO Case (CMS Info Systems, 7 Aug 02, B-290541)
 - SB awards must actually be performed by SBs
 - COs have right to require recertification at time of order under competitive SBSA RFQs against GSA MASs
 - SBA OHA (SIZ-2003-11-25-71, Advanced Mgmt Tech, Jun 04)
 - Offerors must be small as of date of proposal/quote at order level
- **SBA Proposed Rule RIN 3245-AF06, 25 Apr 03**
 - Address time at which size is determined for FSS, MACs, GWACs
 - Proposed to amend CFR to require annual recertification
 - AFMC/PK position: disagreed (SB impacts/increase workloads)
 - Current status: at OMB; no date for publication



Size Recertification



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- **Implications**

- Big impact on SB awards, particularly in today's acquisition environment of long-term, broad-scoped MACs
 - Example: Commodity Councils – a large award to a SB will cause it to quickly grow out of SB status; all awards will then be going to LB
- No current rules/guidance, except
 - Joint letter between SAF/AQC and SAF/SB, signed 10 May 06
 - Recent ruling regarding COs requiring SB recertification on delivery orders
 - » Not interpreted as a precedence, but proposition that under appropriate circumstances, the CO retains the discretion to request recertification before award of a delivery order, task order or the exercise of an option

- **Recommendation**

- Issue policy that acquisition strategy, as well as resulting RFP and DD Form 2579, should include guidelines/rules for recertification based on what makes sense for that specific acquisition



Limitation on Subcontracting



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- **Services = 50% of personnel costs in house**
- **Manufacturing = 50% of cost of production (excl material) in house**
- **Gen construction = 15% of cost of contract (excl materials) in house**
- **Special trade construction = 25% of cost of contract (excl materials) in house**

Ref: FAR 52.219-14



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Limitation on Subcontracting



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SBSA, 8a competitive, 8a sole source

- Cooperative efforts of small prime and small 1st tier subs

HUBZone, SDVOSB

- Small 1st tier subs must be HUBZone or SDVOSB



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Why Team?



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- **Enables firms to complement each other's capabilities**
- **Enables firms to offer the best combination of performance, cost & delivery**
- **Enables SBs to effectively compete for larger scale requirements**





Types of Business Relationships



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- **Prime/Subcontractor Relationship**
 - Prime is responsible for contract performance
 - Government has privity of contract only with the prime
 - Relationships normally identified before offer is submitted
- **Joint Ventures**
 - Contract in Joint Venture's name
 - Contract performance responsibility lies with Joint Venture
 - Agreement must include sharing profit/losses proportionate to each party's contributions to business operations

Selecting Teaming Partners

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- **Compatible contractors**
- **Teaming agreement**
 - All must understand terms and conditions of agreement
- **Assess team member capabilities**
 - Business, financial, other resources
- **Assess team member past performance**
- **Assess legal constraints**
 - Organizational conflicts of interest
 - Debarments/suspensions
 - Qualification requirements
- **Assess team chemistry**
 - Management styles, corporate cultures, strategic visions





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Teaming Benefits



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- **Teaming can expand opportunities**
- **Teaming can be a winning situation for all parties**

**Coming Together is Beginning,
Keeping Together is Progress,
Working Together is Success
- Henry Ford -**





Evaluating SB Participation



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- **Issue: How to evaluate a potential prime contractor's SB (or socioeconomic) program**
 - Developing a evaluation factor
 - Developing a meaningful metric
 - Evaluating performance (post award)

- **Considerations/Challenges/Obstacles:**
 - Different types of bidders (e.g. SB, LB, non-profit)
 - Different types of subcontracting plans
 - Individual Plan
 - Commercial Plan
 - Comprehensive Test Plan



Evaluating SB Participation



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- **Two principal areas of consideration:**
 - **Past Performance**
 - **Prospective Performance (what happens if I am awarded the contract)**
- **Special Factors / areas of consideration:**
 - **SDB participation**
 - **Bundling**



Evaluating SB Participation – PAST PERFORMANCE



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- **DFARS 215.305(a)(2) – Past performance evaluation --- Evaluation factors shall include:**
 - **52.219-8, Utilization of SB, SDB, WOSB, compliance**
 - *(maximum practicable opportunity)*
 - **52.219-9, SB, SDB, WOSB Subcontracting Plan, compliance**



Evaluating SB Participation PROSPECTIVE PROGRAM

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- **DFARS 215.304 – Evaluation Factors & Significant Subfactors**
 - (c)(i) In acq. that require 52.219-9 (subcontracting plan), extent of SB participation **SHALL** be addressed in source selection.
 - CO **SHALL** evaluate the extend to which offerors identify & commit to SB in contract performance ...

*DFARS 215.304
Guidance -
Be creative!
Think it through!
Common Sense Approach*



Evaluating SB Participation – PAST PERFORMANCE

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- **FAR15.304 – Evaluation Factors & Significant Subfactors**
 - (c)(3)(i).... **Past performance *SHALL*** be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$1M
- **FAR15.305(a) – Proposal Evaluation --- Past Performance Evaluation**
 - (2)(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for SDB ...



Evaluating SB Participation PROSPECTIVE PROGRAM

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- **DFARS 215.304 – Evaluation Factors & Significant Subfactors (continued)**
- (A) Evaluation factors **MAY** include – (*among other things*)
 - Extent SB are identified in proposals
 - Extent of commitment to use SB
 - Complexity & variety of work SB will perform
 - - **Past performance** in complying with 52.219-8 and -9
 - - Participation in terms of **total acquisition value**
- (B) Proposals addressing the extent of SB performance **may be separate from subcontracting plans** (FAR 52.219-9) and should be structured to allow for consideration from SB.



Evaluating SB Participation PROSPECTIVE PROGRAM

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- **ONE SIZE DOES NOT FIT ALL !**

Typical Scenarios –

- **Sole Source** (Comprehensive plan participant)
- **Full and Open** (Market Research - only Comprehensive plan participants)
- **Full and Open** (Market Research – only LB)
- **Full and Open** (Market Research – various types)



Evaluating SB Participation PROSPECTIVE PROGRAM

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– Key Questions –

- Market Research
- What makes sense for the particular acquisition?
- What are we trying to evaluate?
- Discriminators
- Factor
 - » **Metric**
 - » **Post Award**
 - » **Past Performance**



Role of the Small Business Office



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- **Duties and Responsibilities**
 - Aid, assist and counsel small business
 - Enhance small business participation in acquisitions
 - Assist in conducting market research
 - Review/coordinate on internal documents
 - Subcontracting Plans, Acquisition Plans, etc.
 - Manage our outreach program

The Small Business Office is the first stop for all small businesses who are interested in doing business with Wright-Patterson Air Force Base





Small Business Office Contacts



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QUESTIONS

