



2012 DoD Mentor-Protégé Conference

Leveraging Small Business Teams to Pursue Large Federal Contracts

Speaker: Eric A. Adolphe, President CSTI

Legislative Initiatives

PL 111-240 Small Business Jobs Act of 2010

- Section 1314 Small Business Teams Pilot Program
 - Establish grants to provide assistance and guidance to teams of small business concerns seeking to compete for larger procurement contracts
 - Make grants eligible to provide assistance to SB teams competing for large federal contracts
 - SBA Administrator to recommend contracting opportunities for Joint Ventures (JVs) or other SB Teams
 - \$5 Million Appropriation

Two Types of SB Teams to Consider

- Joint Ventures (JVs)
- Contract Teaming Arrangements (CTAs)



What's New with JVs?

8(a) Joint Ventures

- A JV may be awarded three contracts in a two year period
 - Window opens upon award of first contract and closes on the date of award of the third
 - SBA may find affiliation between JV partners based on the number of contracts they perform

Non 8(a) Joint Ventures

- SBA Does not Formally Approve Joint Ventures for Non 8(a) Contracts

What's New with JVs?

Past Performance

- FAR 15.305(a)(2)(iii)
 - Evaluation should take into account past performance information regarding predecessor companies and personnel
 - *Re Paintworks, Inc.*, B-292982, the GAO found that Agency's evaluation of the JV's subcontractor's substantial experience was proper
 - *Re JACO & MCC Joint Venture* B-293354.2, the GAO held that an agency may consider the experience and past performance history of individual joint venture companies where it is not specifically prohibited by the solicitation

What's New with JVs?

Past Performance

- JVs with no Past Performance
 - *Re Base Technologies, Inc.*, GAO held that Agency has discretion to determine scope of the offeror's performance history evals and that one or more of the individual JV partners may be considered
 - GAO also found unobjectionable that the agency did not consider the past performance of one of the JV's partners
 - *Re Transventures International, Inc.*, B-292788, GAO held that an agency may consider the experience of the individual members of the JV, but at the same time consider the lack of experience by the JV itself

A Few Compliance Issues

Structural Concerns for 8(a) JVs

– Un Populated

- 8(a) partners must perform 40 percent of the work. This requirement includes all work done by the non 8(a) JV partner and any of its affiliates, including work at the subcontract level. This rule limits the work that the non 8(a) can do outside the JV.
- Parties may share profits based on the percentage of work performed

A Few Compliance Issues

Structural Concerns for 8(a) JVs

– Populated

- 8(a) firm not required to perform a specific percentage of the work
- Profit sharing is unclear, but it looks like the SBA intends for the partners to receive a pro rata share of profits based on ownership
- 8(a) partners in a populated JV must demonstrate how the 8(a) will benefit from the joint venture relationship
 - According to 13 CFR § 124.520 SBA may not approve continuation of a Mentor Protégé Agreement if it finds that the mentor has not provided the assistance set forth in the MP agreement or that the assistance has not resulted in any material benefits or developmental gains to the protégé
 - Result: the JV will no longer be eligible for delivery orders

Consider Contract Teaming Arrangements (CTAs)

CTAs Under FAR 9.601

- Contract Team Arrangement (CTA) exists where two or more companies form a partnership to act as a potential prime (dual primes)
- Similar to a JV, but
 - No new entity formed (example an LLC)
 - Requires an agreement in writing
 - Shared Back Office (Program Management Office)
 - Government may contract directly with any CTA Member
- Potential Concerns
 - Anti trust issues
 - Dividing up proposal preparation costs



Examples - Discussion



Questions?