



# **GUIDEBOOK FOR FACILITATING SMALL BUSINESS TEAM ARRANGEMENTS**

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# Preface

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This guidebook is the first to employ tactics to encourage small business-led teams as a strategy to increase competition and expand opportunities for small business on consolidated contracts. While our prior guidebooks have dealt with strategies to avoid contract consolidation and bundling and to mitigate its affects when necessary, here we have advocated the use of small business-led teams as a way for these businesses to compete for consolidated contracts. Encouraging teams, led by small businesses, can strengthen the Department of Defense (DoD) supplier base by increasing the competitiveness of small businesses. Moreover—due in part to shrinking budgets and acquisition resources—contract consolidation is a trend that is likely to continue—this requires new ways to decrease barriers to small business participation on DoD contracts. This guidebook is a step in that direction.



# Chapter 1

## Introduction

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### Chapter Highlights

*In this chapter, we discuss the primary purpose of this guidebook—to help acquisition strategy team members (the target audience) with tactics to encourage small businesses to form teams to compete as prime contractors on DoD consolidated contracts. This chapter also explains the structure of this guidebook, and why it is critical to encourage small businesses to compete as teams.*

## GROWTH OF TEAMING

From the football field to the boardroom, a coordinated team effort is critical. The drive toward product or service differentiation has led firms to concentrate on niche markets by providing highly specialized services or products. In addition, competition has fostered outsourcing of all but the core capabilities of a firm. In this environment, teaming has become commonplace. Firms seek partner firms to provide commodities and services as needed.

The growth in the size and complexity of government, and particularly DoD, procurements has made teaming a necessity in the federal marketplace.

## GROWTH OF CONTRACT CONSOLIDATION

Within the last decade, DoD has seen widespread and far-reaching changes in the way it buys goods and services. One trend is the growth of contract consolidation. This practice involves combining two or more requirements into a single new solicitation. Although this has helped the government cope with the reduction in the acquisition workforce through fewer contracts, it has occasionally generated requirements (bundled contracts) that are out of the reach of small business concerns. For example, weapons systems contracts are generally the result of consolidating multiple disciplines and requirements into a single solicitation for (large business) team competition. Likewise, orders issued under agency multiple award contracts, multi-agency contracts, government-wide acquisition contracts, and the [Multiple Award Schedule Program](#)<sup>1</sup> may result in contract consolidation and awards to teams composed of large contractors. A new practice, [Strategic Sourcing](#), has motivated DoD buyers to target specific requirements for consoli-

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<sup>1</sup> The Multiple Award Schedule Program is administered by the General Services Administration.

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dation. Contractor's frequently form teams in their search to satisfy government these type of requirements.<sup>2</sup>

Contract requirements are becoming more complex; larger in scope, size, and dollar amount; and often geographically dispersed. At the same time, DoD buyers remain charged with carrying out the principal tenet of the [Small Business Act](#): provide the maximum practicable opportunity to small businesses. This guidebook aims to fill the void of practical guidance on how to facilitate the formation and participation of small business teams in the competition for larger DoD requirements.

## PURPOSE

The purpose of this guidebook is to provide acquisition strategy teams<sup>3</sup> with a "road map" on how to stimulate competition for consolidated requirements by encouraging teaming among small businesses. Although this strategy alone will not overcome every problem faced by small businesses, it does open the door by broadening competition on large DoD contracts.

This guidebook also serves as a resource for acquisition strategy teams to help level the playing field for small businesses. It offers several examples of real-world strategies to encourage the participation of teams in DoD acquisitions. Other initiatives and practices are summarized and listed as resources with helpful contact information for further review by interested readers. An online version of the guidebook is available at the DoD Office of Small Business Programs website: <http://www.acq.osd.mil/osbp/>.

## STRUCTURE OF THIS GUIDEBOOK

This guidebook is organized as follows:

- ◆ Chapter 2 addresses the challenges of consolidation and bundling faced by small business.
- ◆ Chapter 3 summarizes the benefits of small business team formation.
- ◆ Chapter 4 outlines the major types of small business team arrangements. We consider the relative merits of each and explain which team arrangements work best for certain acquisition strategies.

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<sup>2</sup> Strategic sourcing is the process of analyzing an organization's "spend" and using that information to make business decisions about how to buy products and services more effectively and efficiently. Usually, strategic sourcing results in the consolidation of requirements that is more suited for contractor teams than individual contractors such as support for an overall department, region, base, agency, or multiple agencies.

<sup>3</sup> DoD acquisition strategy team members typically include contracting personnel; small business specialists; program, legal, and financial managers; and other team members.

- ◆ Chapter 5 provides a synopsis of the Small Business Administration (SBA) affiliation rules. Here we propose a logical structure for decision making and identify the impact of affiliation rules on team formation.
- ◆ Chapter 6 explores seven strategies to level the playing field for small businesses.

Appendices A through D include simplified examples illustrating how an acquisition strategy team would facilitate small business-led teaming arrangements. Appendix A illustrates the facilitation of small business joint ventures. Appendix B describes an example of small business team arrangements as subcontractors under a prime contract. Appendix C discusses an example of encouraging small business teams as prime contractors and Appendix D demonstrates how to encourage small business subcontracting.

# Chapter 2

## Challenges of Consolidation and Bundling to Small Business

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### Chapter Highlights

*In this chapter, we discuss the challenges small businesses face relative to contract consolidation and bundling. This chapter also provides definitions for consolidation and bundling and an overview of the relationship between the two terms. It will be important for you to understand the challenges a single small business may face relative to these two outcomes so that you or your team can determine the appropriate strategies and tactics to motivate small businesses to form teams to overcome such challenges.*

## CONSOLIDATION

“Consolidation” is the term used in the contract arena to describe the act of combining two or more requirements into a single solicitation. As defined in statute, for a consolidation to exist, the proposed acquisition must be combining two or more requirements that were previously provided or performed under separate contracts.<sup>4</sup>

For requirements to be consolidated, they must have the following characteristics:

- ◆ The requirements are incorporated into a proposed solicitation for either a single contract (or order) or for multiple awards with two or more requirements of the department, agency or activity.
- ◆ The requirements were previously performed under two or more separate contracts.

Sometimes consolidated requirements can be suitable for small business competition. For example, an acquisition strategy team decides to combine the requirements for regional secure mailroom services. The requirements were previously purchased under separate smaller contracts but are now consolidated into a single contract. If the new solicitation is determined to be suitable for award to small business by the acquisition strategy team, it is not only beneficial to small business, it can be made available to them via open competition or a small business set-aside, if there are two or more capable sources.

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<sup>4</sup> [Section 801, National Defense Authorization Act for Fiscal Year 2004.](#)

On the other hand, sometimes a consolidated contract can stifle small business participation. To understand these challenges, we turn to a bundled contract.

## BUNDLING

A bundled contract is a consolidation that is unsuitable for award to a small business as prime contractor even though one or more of the previous contracts was performed (or could have been performed) by a small business. To put it another way, a solicitation that consolidates requirements does not always bundle them, but a solicitation that bundles requirements always consolidates them. This distinction is important because the rules that apply to bundling are more restrictive; hence, as your team develops its acquisition strategy, it must first decide whether the solicitation will result in a consolidation *or* in a consolidation and a bundle. Only for DoD is there a specific definition for the term “consolidation,” a corresponding regulatory coverage that differentiates consolidation from bundling, and unique requirements for acquisition personnel to follow when considering consolidations.

The bundling regulations do not apply to bundled acquisitions in which the award will be made or the work will be performed entirely outside of the United States.<sup>5</sup> Consolidation regulations do not apply to consolidated acquisitions with an estimated total value of \$5.5 million or less.<sup>6</sup>

The regulations regarding consolidation and bundling represent an area of potential complexity for the acquisition community. They require acquisition strategy teams to justify their actions for both consolidations and bundled contracts above the \$7.5 million threshold for DoD and, more important, to explore alternatives to consolidation and bundling.<sup>7</sup>

For a single small business firm, it is frequently impossible to compete for consolidated requirements. Therefore, it is incumbent upon acquisition strategy teams to strive to find ways to encourage the formation of small business teams. Though it may require extra effort during acquisition planning, this effort is outweighed by the benefits of increased competition and a more diversified contractor base.

The [Small Business Act](#) (as amended)<sup>8</sup> identifies factors that contribute to bundling by deterring small business participation. We discuss these factors individually.

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<sup>5</sup> [FAR 2.101](#).

<sup>6</sup> [DFARS 207.170-3\(a\)](#).

<sup>7</sup> If the value of the acquisition is over \$5.5 million, consolidation regulations apply. The contracting officer must still make a determination that measurably substantial benefits will accrue for bundled requirements *at any dollar value*. The \$7.5 million threshold indicates “substantial bundling” for DoD and requires identification of specific benefits, alternative strategies (and rationale for not choosing them), and determination that benefits justify the bundling.

<sup>8</sup> [Public Law 85-536](#), as amended, Section 3(o)(2).

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## Diversity, Size, and Specialized Nature of the Requirement

The combined requirements may be too diverse to be within the capability or capacity of a small business. For example, a small business might be able to perform only certain computer maintenance tasks, such as help desk or training support. When a solicitation adds network operations and maintenance and application software development, it might become too diverse for a single small business. If the acquisition strategy team determines that the solicitation consolidates requirements that are too diverse for a small business, the proposed contract is bundled.

When the work required in a proposed solicitation is too large for a single small business to perform, it too may be bundled. For example, if a solicitation requires the deployment of a region-wide telecommunications network, the work may be beyond the scope of a small business; if so, the requirements may be bundled.

If a proposed solicitation is so specialized that a small business will be unable to perform it, it too may be bundled. For instance, when a requirement that calls for waste disposal is combined with specialized security clearances enabling proper disposal of classified documents, the combined requirements may be too specialized for a small business.

## Aggregate Dollar Value

Another factor is whether the aggregate dollar value of the requirement is too large for a small business to perform. Typically, the [North American Industrial Classification System](#) (NAICS) code<sup>9</sup> determines the relevant small business size standard applicable to the requirement. If the acquisition strategy team determines that the solicitation consolidates requirements such that the aggregate dollar value is too large for a small business to handle, the proposed contract is bundled.

## Geographical Dispersion of the Contract Performance Sites

The acquisition strategy team determines whether requirements will be so dispersed geographically that it would be too difficult for a small business to perform. For example, a single small business may not be able to maintain nationwide family housing facilities. If the acquisition strategy team determines that the solicitation consolidates requirements that are too dispersed geographically for a small business, the proposed contract is bundled.

## Combination of Factors

If the requirements combine any of these factors—for example, a proposed contract that requires base support services ranging from grounds maintenance to food services at a dozen activities across the country—the acquisition strategy

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<sup>9</sup> [FAR 19.102](#).

team may determine that the solicitation may be unsuitable for award to small business. If the team determines that the solicitation consolidates requirements to the degree that the resulting contract would be unsuitable for small business performance as a prime contractor by any combination of the above-described factors, the proposed contract is bundled.

## SUMMARY

Consolidation is the combination of two or more requirements, previously purchased separately by the DoD, into a single solicitation. The solicitation may be for a single contract or for multiple award contracts. Bundling is a subset of consolidation that occurs when at least one of the previous contracts was performed or could have been performed by a small business firm but the proposed acquisition strategy is unlikely to be suitable for award to small business. Factors that contribute to bundling include the diversity, size, or specialized nature of the elements of the performance specified; the aggregate dollar value of the anticipated award; the geographical dispersion of the contract performance sites; or any combination of these factors. Substantial bundling occurs when the cumulative estimated value of the acquisition is anticipated to meet or exceed \$7.5 million.

Small businesses may benefit from contract consolidation, but more often than not, large businesses are the beneficiaries. Encouraging small business teams in your solicitations is one way to increase both competition and small business participation.

# Chapter 3

## Benefits of Small Business Teams

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### Chapter Highlights

*In this chapter, we discuss the mutual benefits to DoD and small business of forming teams to compete for DoD opportunities. More important, this chapter demonstrates that through this win-win approach, DoD and small business are more likely to succeed in increasing their participation as prime contractors on DoD consolidated contracts.*

## BENEFITS TO DoD

When small businesses compete as teams—DoD benefits. Specifically, by encouraging small business teams, DoD can do the following:

- ◆ Consolidate requirements with a single contractor
- ◆ Reduce the administrative burden
- ◆ Have a single point of contact
- ◆ Reduce program management
- ◆ Support small business contractor development
- ◆ Increase competition and expand opportunities for small business
- ◆ Increase innovation
- ◆ Reduce risks.

## Consolidate Requirements with a Single Contractor

For some time now, DoD has been consolidating contract requirements to streamline the procurement process, reduce cost and expense, and leverage its buying power. At the same time, buyers are encouraged to unbundle, break out, or reserve specific requirements for small business to mitigate the negative impact of contract consolidation/bundling upon small business opportunities. Although these tactics are effective, they often result in less operational efficiency to DoD.

Another tactic to ensure that small businesses receive the maximum practicable opportunity to compete on DoD contracts is to encourage small businesses to

compete as teams. The major advantage of this tactic is that it avoids trading off operational efficiency for increased small business participation.

## **Reduce the Administrative Burden**

Faced with the increasing need to do more with less, DoD continues to seek ways to improve productivity and reduce its administrative burden and cost. By consolidating requirements, DoD eliminates duplicative contracting tasks by performing them once rather than multiple times.

## **Have a Single Point of Contact**

Having a single point of contact provides for better communication, coordination, and continuity of support. This also tends to improve quality because there is less chance for confusion and errors when interfacing with one contact rather than multiple contacts.

## **Reduce Program Management**

In the post-award stage of an acquisition, DoD saves time and expense when it performs program and contract management duties with one rather than multiple contractors.

## **Support Small Business Contractor Development**

The experiences small businesses receive participating in DoD programs such as the Mentor-Protégé and Small Business Innovation Research programs all contribute to enhancing and sharpening the skills of DoD's industrial contractor base. Encouraging small business teams to participate as prime contractors on DoD contracts can also provide these firms with an opportunity to deepen their base of experience. This benefits DoD and small businesses; their experience as team members will pay dividends on each new endeavor.

## **Increase Competition and Expanded Opportunities for Small Businesses**

When DoD buyers consolidate requirements into a single solicitation and encourage small business teams to participate, they are enhancing both competition and small business participation. Moreover, by increasing small business participation, DoD can potentially obtain lower prices.

## **Increase Innovation**

In addition to increasing competition and expanding opportunities for small businesses, encouraging teams provides for an environment that will accelerate innovation and new solutions and approaches to DoD requirements.

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## Reduce Risks

DoD buyers and program managers face many risks in contracting, such as schedule, performance, and financial risks. As most experienced DoD buyers know, sourcing requirements to a large business with deep pockets may be one way to reduce financial risk such as the risk of bankruptcy—a risk buyers face when doing business with small businesses. However, when small businesses compete as teams, the risk of bankruptcy may be reduced or eliminated, since the financial risk can be spread to all team members.

## BENEFITS TO SMALL BUSINESSES

Just as large businesses regularly team in the federal marketplace to achieve certain benefits, small businesses can achieve the same benefits and expand their prime contract (and subcontract) procurement opportunities. Specifically, by forming teams, small businesses can do the following:

- ◆ Take advantage of relaxed SBA affiliation rules
- ◆ Maximize complementary skills, resources, and capabilities
- ◆ Minimize risks
- ◆ Develop a direct relationship with DoD
- ◆ Fill gaps in past performance
- ◆ Eliminate barriers (for example, supporting requirements that are geographically dispersed)
- ◆ Increase competitiveness.

## Take Advantage of Relaxed SBA Affiliation Rules

A small business team (two or more small businesses) may submit an offer to DoD on a bundled contract and take advantage of relaxed SBA affiliation rules as a “small business” without regard to affiliation as long as each is small under the NAICS codes assigned to the contract.<sup>10</sup> We discuss SBA affiliation rules in detail in Chapter 5 of this guidebook.

## Maximize Complementary Skills, Resources, and Capabilities

A small business team has the potential to bring together complementary skills, resources, and capabilities that can exceed those of any single contractor on the

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<sup>10</sup> See [13 CFR 121.103](#).

team. By jointly developing clear goals and approaches to DoD requirements, a small business team can be both flexible and responsive to your needs.

## Minimize Risks

Small businesses can minimize their risks by competing as a team rather than a single business. Not only can the team resolve potential problems before they occur, they can pool their capital to reduce other risks associated with competing on DoD contracts.

## Develop a Direct Relationship with DoD

On most large DoD contracts, it is not uncommon to find small businesses participating as subcontractors. Because of privity of contract, the small business subcontractor has no legal or direct relationship with DoD. Small business teams may provide for a direct relationship because the team, if awarded the contract as a prime contractor, may have privity of contract with DoD.

## Fill Gaps in Past Performance

An individual small business may have gaps in its past performance when considering whether to bid on a DoD opportunity. However, a small business can fill those gaps by forming a team whose members have the needed experience. Filling gaps in past performance through a team arrangement will help give the DoD customer the confidence that the team can perform the work.

## Eliminate Barriers

A DoD solicitation that calls for regional or nationwide performance may be a barrier for a single small business. However, a small business team has the potential to overcome this barrier.

## Increase Competitiveness

Like most contractors, small businesses must spend nonreimbursable time and expense preparing bids and proposals to compete for DoD's business. The nature of the requirements, its estimated dollar size and complexity, and other factors all contribute to how much time and expense each contractor will decide is enough to produce a winning proposal. Spreading this cost over multiple contractors can result in a more competitive proposal. Also, as noted above, the potential to bring together complementary skills, resources, and capabilities and to fill in gaps in past performance contributes to increased competitiveness.

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## SUMMARY

DoD and small businesses both benefit when small businesses compete as teams. DoD can consolidate requirements with a single contractor and reduce its administrative burden. By having one contract rather than multiple contracts, DoD realizes a reduction in program management. Also, when small businesses participate as a prime contractor rather than a subcontractor, DoD benefits by increasing the depth of its small business contractor base. Moreover, DoD receives the benefit of increased competition, lower prices, and expanded opportunities for small businesses. This in turn can lead to more innovation and ultimately to lower risks for DoD.

A small business team can maximize complementary skills, resources, and capabilities by teaming and minimizing their risks. A small business team can take advantage of SBA's relaxed affiliation rules and be considered a "small business" without regard to affiliation as long as each is small under NAICS codes assigned to the bundled contract. As a prime contractor, the small business team will have a direct relationship with DoD, a relationship that many small businesses prefer. Also, through a small business team, barriers can be eliminated by, for example, using team members to help support geographically dispersed requirements. Finally, competing as a team also increases competitiveness and allows the team to fill gaps in past performance to demonstrate that the team can do the work.

# Chapter 4

## Types of Team Arrangements

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### Chapter Highlights

*In this chapter, we define “team arrangements” and discuss the major types of team arrangements, providing examples of each type. We consider the relative merits of each, and explain which team arrangements work best for certain acquisition strategies.*

## ABOUT TEAM ARRANGEMENTS

The term “team arrangement” generally refers to the various types of strategic alliances contractors have formed to enhance efficiencies, exploit complementary capabilities, and ultimately increase competitiveness in the federal marketplace. Federal Acquisition Regulation (FAR) [FAR 9.601](#) defines contractor team arrangements as follows: “Two or more companies form a partnership or joint venture to act as a potential prime contractor;” or “A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified contract or acquisition program.”

#### **FAR 9.601 Definitions of a “Team Arrangement”**

**A “Contractor team arrangement,” as used in this subpart, means an arrangement in which–**

- (1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or**
- (2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program.**

Both the government and industry may find contractor team arrangements desirable to provide for the best combination of performance, cost, quality, and delivery, as stated in [FAR SUBPART 9.602](#).

#### **FAR 9.602 “General”**

**Contractor team arrangements may be desirable from both a government and industry standpoint in order to enable the companies involved to complement each other’s unique capabilities; and offer the best combination of performance, cost, and delivery for the system or product being acquired.**

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Teaming in the federal marketplace is an established practice in which firms routinely combine complementary and compatible resources and services by entering into teaming arrangements to pursue opportunities. The government will recognize the integrity and validity of contractor team arrangements ([FAR 9.603](#)) as long as the arrangements are identified and company relationships are fully disclosed in a competitive proposal or, for arrangements entered into after submission of a competitive proposal, before the teaming arrangement becomes effective.

**FAR 9.603 “Policy”**

**The government will recognize the integrity and validity of contractor team arrangements, provided, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. The government will not normally require or encourage the dissolution of contractor team arrangements.**

Another important consideration of the teaming arrangement is *limitations*. Specifically, [FAR 9.604](#) does not authorize contractor team arrangements in violation of antitrust statutes. In addition, contractor team arrangements cannot limit certain government rights, such as the right to hold the prime contractor fully responsible for contract performance regardless of the composition of the team.

**FAR 9.604 “Limitations”**

**Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the government’s rights to:**

- **Require consent to subcontracts (see Subpart 44.2)**
- **Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see Subpart 9.1)**
- **Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time**
- **Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.**

Although teaming is a customary business strategy for most large businesses, many small firms often practice a go-it-alone strategy for a variety of reasons. For example, some small business owners do not want to give up control; a go-it-alone strategy ensures they will not have to. Others avoid teaming because they want to have a direct relationship with the federal customer, and teaming (as a subcontractor) may mean either no relationship or minimal contact with the federal customer. Still others avoid teaming because they fear investing in a proposal effort, working to win a contract, only to be squeezed out of a resultant contract if the prime contractor refuses to negotiate a subcontract with the team member. Additional reasons include limited resources (for example, legal expertise) or prior negative teaming experiences.

Some small businesses may resist joining a team because they believe that they already have the right combination of assets, skills, and capabilities to be competitive and see no advantage in collaborating with other businesses. Other small businesses avoid teaming for fear that the teaming arrangement may be construed as an affiliation—a single entity and other-than-small entity—thereby placing at risk the small businesses' ability to qualify as small under the size standard of averaged annual receipts. (This may be due to a lack of understanding of SBA's affiliation rules, federal regulations, other legal requirements or reasons.) Finally, some small businesses just prefer to be subcontractors rather than prime contractors.

Unfortunately, a go-it-alone strategy may not be enough for small businesses to participate at the prime level and to flourish in today's environment in which contract consolidation appears to have taken root for the long run. For this reason, it is important to explore the various types of teaming arrangements.

## TEAMING AGREEMENTS

### Traditional Prime Contractor and Subcontractor Relationship

The prevailing federal teaming business model, as it relates to small business, is one in which large businesses are motivated to seek out small businesses as team members. These team members act as subcontractors if the team is awarded a contract. A teaming agreement is not a subcontract for the performance of work under a prime contract. Rather, it is an agreement to work together to pursue a prime contract with the promise to work together (in good faith) to negotiate a subcontract with the team members if the team is successful in winning a contract award.

For their efforts, large businesses may receive evaluation or subcontracting plan credit. They also can demonstrate a good-faith effort in utilizing small businesses by proposing one or more as part of their overall team. Though these efforts are positive, in some cases, small business owners believe they are underutilized, for example, when they are relegated to low-tech work after contract award. This could be perceived as the inability of some small businesses to effectively negotiate a favorable teaming arrangement, but it could also be the result of an imbalance in bargaining power that favors large contractors.

The traditional prime and subcontractor relationship works best for acquisitions in which the consolidated requirements are so large that they are beyond the reach of small businesses.

### Nontraditional Prime Contractor and Subcontractor Relationships

Small business firms that team with other small business firms are somewhat of an anomaly in the federal marketplace. However, such an arrangement could

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work very well for acquisitions in which multiple tasks must be performed and the tasks are specialized. Small businesses with unique specializations can join forces and together pursue opportunities that would have been beyond their reach in their individual capacities.

The same holds true when contract performance locations are geographically dispersed. Although one small business may not be able to perform beyond a particular region, that business can team with other small businesses in other regions to pursue the procurement.

Small business-to-small business team arrangements have many advantages. For example, when small businesses team with other small businesses, it becomes an arrangement among peers, rather than an arrangement between a superior and a subordinate. In addition, because the small business team members bring specialized and complementary skill sets to the procurement, the risk that any team member will be underutilized is significantly reduced. Likewise, since each team member must rely upon the other team members' expertise, there is minimal risk that the prime small business contractor will refuse to negotiate a subcontract with a small business team member if the team is awarded a contract. Indeed, if the teaming agreement is structured well, the small business team members will be virtually guaranteed work if the team is awarded the contract. Thus, the nontraditional teaming arrangement—one in which a prospective small prime contractor teams with one or more small business team members—can prove beneficial.

## Elements of Teaming Agreements

To ameliorate many of the challenges and concerns with which small business firms grapple when considering whether or not to collaborate, the teaming agreement should be well written and should clearly establish the roles each party will play in proposal preparation. The teaming agreement should also clearly define the unique roles to be performed by the proposed prime contractor and the proposed subcontractors upon contract award. A teaming agreement should provide for the protection of team members' proprietary information. In addition, the teaming agreement should allocate to each team member a share of the prospective contract.

Another important element of the teaming agreement is exclusivity. Team members should enter the relationship with the assurance that they will not be replaced and that other team members are not also teaming with other firms for the same procurement, acting as both team member and competitor. Moreover, the proposed prime contractor must be vested with control and responsibility for the daily management of the procurement. The proposed prime contractor must be solely responsible for contract performance, including the contract items allocated to subcontractors.

The following are key elements of teaming agreements:

- ◆ Proposal preparation responsibilities of all team members are clearly defined.
- ◆ Team members are required to submit a proposal to the prime contractor covering the team members' portion of the effort.
- ◆ Statement-of-work tasks are clearly divided among team members in the event of contract award.
- ◆ Protection of the competition-sensitive proprietary information of all team members is provided for.
- ◆ The proposed prime contractor is responsible for adhering to contract terms and conditions.
- ◆ The proposed prime contractor is responsible for daily management in the event of contract award.
- ◆ The prime contractor is obligated to negotiate a subcontract in good faith if the team receives a contract award.
- ◆ Exclusivity is guaranteed, ensuring that team members cannot be easily replaced and that team members will not simultaneously act as team members and competitors by teaming with other firms on the same procurement.

## SUBCONTRACTING

When the team members are successful in their procurement pursuit and the proposed prime contractor is awarded a contract, the team members must then negotiate in good faith to enter into a subcontract. The subcontract serves to formalize the legal relationship between the team members and the prime contractor.

The key issue related to subcontracting concerns the notion of contract privity. In general, two parties are in privity of contract if they are both parties to the same contract. In federal procurement, the prime contractor and the government are in privity of contract with each other on the prime contract. Consequently, the prime contractor bears full responsibility for adhering to contract terms and conditions. The prime contractor and the subcontractor are in privity of contract with each other on the subcontract. The prime contractor is responsible for conveying mandatory government terms and conditions to the subcontractor.

The government does not stand in privity of contract with the subcontractor, even though there seems to be an indirect relationship because the subcontractor is performing under the prime contract. Thus, if the subcontractor fails to adhere to

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mandatory government terms and conditions, the prime contractor will be held responsible. In addition, if the subcontractor believes it has been adversely affected by actions or inactions by the government, it, as a general rule, can seek relief only from the prime contractor.

Key elements of the subcontracting relationship are summarized below:

- ◆ Prime contractor
  - Has a direct relationship with DoD
  - Has privity of contract with DoD
  - Is responsible for adhering to contract terms and conditions
  - Conveys appropriate terms and conditions to the subcontractor
  - Manages the subcontractor's performance and adherence to the subcontract
- ◆ Small business subcontractor
  - Has a direct relationship with the prime contractor and not DoD
  - Is responsible for adhering to subcontract terms and conditions
  - Conveys appropriate terms and conditions to second-tier subcontractors
  - Manages the second-tier subcontractors' performance and adherence to the subcontract.

## Limitations on Subcontracting

The *Limitations on Subcontracting* clause (see [13 CFR 125.6](#)) places restrictions on the percentage of cost that can be subcontracted in order to be awarded a full or partial small business set-aside contract, an 8(a) contract, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference.<sup>11</sup> Thus the small business prime contractor (or joint venture) must perform a certain percentage of the work themselves. Table 4-1 summarizes the type of work (services, supplies/products, general construction and specialty construction) and the percentage of cost restricted to the small business prime contractor. However, prime contractors under HUBZone or

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<sup>11</sup> FAR [52.219-14](#) limits subcontracting for small business set-asides, including 8(a) competitive and 8(a) sole source. FAR 52.219-3 [FAR 52-219-3](#) limits subcontracting for HUBZone set asides and HUBZone sole source. [FAR 52.219-27](#) limits subcontracting for SDVOSB set-asides and SDVOSB sole source.

SDVOSB sole source or set-asides may include other HUBZone or SDVOSB concerns (e.g., subcontractors).

*Table 4-1. Limitations on Subcontracting*

Type of Work	Percent of Cost
Services	At least 50% of the costs incurred for personnel
Supplies/Products	At least 50% of the cost of manufacturing the supplies or products (not including the cost of materials)
General Construction	At least 15% of the cost of the contract with its own employees (not including the cost of materials)
Specialty Construction	At least 25% of the cost of the contract with its own employees (not including the cost of materials)

## PARTNERSHIPS

Team arrangements can take the form of partnerships. A partnership is a business enterprise consisting of two or more individuals or concerns who come together to co-own a trade or business for profit. The partners share ownership of a single business. The law makes no distinction between the business and the owners of the business. Each partner contributes in one or more way with money, property, labor, or skill, and each shares in the profits and risks of loss in accordance with a partnership agreement or understanding. The partnership, and the members of the partnership, are in privity of contract with the government. A partnership can be incorporated, can provide for limited liability, or can be an unincorporated organization (syndicate, group, pool) that carries on a business. Partnerships fall into two basic types: general partnerships and limited partnerships.

### General Partnerships

The general partnership is probably the most common, yet the most fragile type of business enterprise. In a general partnership, each partner invests in the enterprise in some way (for example, with money, property, labor, or skill). That investment typically establishes an agreed-upon percentage of ownership. Notwithstanding a partner's percentage of ownership, each partner is individually liable for all the debts of the partnership, regardless of which partner incurred the debt. Also, in a general partnership, the action of any partner can bind the entire partnership on contracts. A general partnership may be based on a written agreement, an oral agreement, or even a handshake.

The following are key elements of general partnerships:

- ◆ Each partner invests in some way.
- ◆ All partners are equally and individually liable for debts of the partnership regardless of their percentage ownership.

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- ◆ Actions of any one partner can affect and bind the entire partnership.
  - ◆ A written agreement is not necessary to form a general partnership.

A general partnership can be easily formed, yet it carries the greatest amount of risk. As a result, it generally is not the preferred form of team arrangement.

## Limited Partnerships/Limited Liability Partnerships

A limited partnership is a special type of partnership consisting of general partners and limited partners. The general partners manage the business enterprise and are liable for the legal debts and obligations of the partnership. The limited partners invest funds into the partnership in exchange for receiving a predetermined share of the profit. The limited partners are prohibited from participating in the management of the partnership; otherwise, they will lose their limited partner status. They have no authority to control day-to-day operations. Limited partners are liable only to the extent of their investments. Limited partnerships are formed by a written agreement between the managers of the enterprise and the limited partners.

Key elements of limited partnerships are as follows:

- ◆ The arrangement consists of general partners and limited partners.
- ◆ General partners are responsible for managing the limited partnership; limited partners cannot control how the partnership conducts its business.
- ◆ Limited partners invest funds into the partnership.
- ◆ Limited partners receive a predetermined share of the profit.
- ◆ Limited partners are first in line to receive profits, tax deductions, and potential shares in the success of the enterprise.
- ◆ Limited partners' losses are limited to the amount of their investments.

A limited partnership may be advantageous when a small business needs significant capital to finance start-up costs on a consolidated procurement.

## JOINT VENTURES

Another type of team arrangement is a joint venture. The [Code of Federal Regulations](#) (CFR) [13 CFR 121.103\(h\)](#) defines a joint venture as an association of two or more individuals or concerns formed to undertake a particular business transaction or project, rather than one intended to continue indefinitely. The members of the joint venture share in the profits and risk of loss. The joint venture entity, and its members, are in privity of contract with the government.

**13 CFR 121.103(h) SBA Definition of a “Joint Venture”**

**(h) Affiliation based on joint ventures. A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. This means that the joint venture entity cannot submit more than three offers over a two year period, starting from the date of the submission of the first offer. A joint venture may or may not be in the form of a separate legal entity. The joint venture is viewed as a business entity in determining power to control its management. SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section.**

Under the SBA definition, a joint venture cannot submit more than three proposals over a 2-year period, starting with the date of the first proposal submission. A joint venture need not be in the form of a separate legal entity. However, whether a legal entity or not, the joint venture is viewed as a business entity in determining the power to control its management. Also, the SBA may view some teaming arrangements between prime and subcontractors as constituting joint ventures and conclude that the entities are affiliated.

The Small Business Size Regulations, [13 CFR 121.401\(k\)\(1\)](#), provide additional guidance regarding what constitutes a joint venture. A significant factor in determining if an entity is a joint venture is whether sharing of profits and losses is proportionate to each entity’s contribution to the business venture.

**13 CFR 121.401(k)(1)**

**The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An arrangement to share profits/losses proportionate to each party’s contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.**

Under the SBA regulation ([13 CFR 121.401\(k\)\(4\)](#)), whether or not a business operation constitutes a joint venture depends less on what the parties call the business operation, and more on how the business operates. In fact, even if the parties designate their business venture as constituting a prime/sub arrangement, SBA will look beyond the designation to how the business venture operates. If, for example, the ostensible prime contractor is unduly reliant upon the ostensible subcontractor, the SBA may conclude that the arrangement is in fact a joint venture.

**13 CFR 121.401(k)(4)**

**An ostensible subcontractor which performs or is to perform primary or vital requirements of a contract may have such a controlling role that it must be considered a joint venturer affiliated on the contract with the prime contractor. In determining whether subcontracting rises to the level of affiliation as a joint venture, SBA considers whether the prime contractor has unusual reliance on the subcontractor.**

The FAR, in [FAR 19.101\(7\)\(i\)](#), also defines joint ventures as “an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit.” Like the SBA regulations, the FAR defines a joint venture as having a limited life, rather than being permanent.

**FAR 19.101(7)(i) Definition of a “Joint Venture”**

**(i) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.**

Unlike the SBA regulations, which permit a joint venture to submit up to three proposals for different procurements over a 2-year period, the FAR defines a joint venture as collaborating on a single specific business venture.

## Size Exceptions for Joint Ventures

Small business concerns can benefit from forming a joint venture to pursue large procurement opportunities. For bundled requirements, the small business size standard is applied to the individual people or concerns, not to the combined assets of the joint venture (see [13 CFR 121.103\(f\)\(3\)](#)). For large procurements of other-than-bundled requirements, the small business size standard is likewise applied to individual people or concerns and not to the total assets of the entire joint venture. This allows small businesses to leverage their capabilities to participate at the prime level without invalidating their status as small businesses.

**13 CFR 121.103(f)(3), Exclusion From Affiliation**

**(i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a non-8(a) Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided: (A) The procurement qualifies as a “bundled” requirement, at any dollar value, within the meaning of Sec. 125.2(d)(1)(i) of this chapter; or (B) The procurement is other than a “bundled” requirement within the meaning of Sec. 125.2(d)(1)(i) of this chapter, and: (1) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or (2) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds \$10 million.**

The FAR similarly relaxes the standard size requirements to enable small businesses to form joint ventures without fear of losing their status as small businesses and of forfeiting other small business opportunities. For bundled procurements, [FAR 19.101\(7\)](#) requires the small business size standard to be applied to the individual small business concerns, and not to the combined assets of the joint venture. [FAR 19.101\(7\)](#) similarly requires that the small business size standard be applied to the individual members of the joint venture rather than to the combined assets of the joint venture for procurements that are not bundled requirements if (1) for a revenue-based size standard, the estimated contract value (including options) exceeds one-half of the applicable size standard, or (2) for an employee-based size standard, the estimated contract value exceeds \$10 million.

These regulatory initiatives serve to foster the formation of joint ventures among small business firms to pursue bundled or large government procurements.

## Key Elements of Joint Ventures

Unlike the prime contractor–subcontractor relationship in which only the prime contractor stands in privity of contract with the government, the joint venture itself (which includes all the members of the joint venture) stands in contract privity with the government. This means that the members of the joint venture can have access to the government. If any member of the joint venture fails to adhere to the terms and conditions of the contract, the entire joint venture entity—and not solely the joint venture member at fault—will be held responsible. For this reason, it is advisable for joint venture members to include indemnification provisions in the joint venture agreement. The indemnification agreement should require the offending joint venture member to make the joint venture whole if the joint venture is liable for the acts or inactions of the joint venture member.

In addition, the joint venture agreement should clearly establish the joint venture as an independent entity and should clearly define the roles of each member of the joint venture. The joint venture agreement should indicate that the members are

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individually and severally liable for contract performance. In addition, the joint venture agreement should indicate how profits and losses are to be distributed.

Key elements of joint ventures are as follows:

- ◆ The contract is in the name of the joint venture entity.
- ◆ The joint venture entity is responsible for contract performance.
- ◆ Joint venture members are in privity of a contract with the government.
- ◆ Joint venture members are individually and equally liable for contract performance.
- ◆ Joint venture members share profits and risk of loss.
- ◆ Indemnification provisions exist to protect the joint venture from the negligent actions or inactions of a joint venture member.

## Specific Types of Joint Ventures

### SDB JOINT VENTURES

Teaming arrangements can occur with a small disadvantaged business (SDB). An SDB may form a joint venture with one or more other business concerns to perform a federal contract (see [13 CFR 124.1002\(f\)](#)). A joint venture of at least one SDB and one or more other business concerns may submit an offer as a small business for a competitive procurement as long as each concern is small according to the applicable NAICS code assigned to the contract.

**13 CFR 124.1002(f), Joint Ventures**

**Joint ventures are permitted for SDB procurement mechanisms (such as price evaluation adjustments, evaluation factors or subfactors, monetary subcontracting incentives, or SDB set-asides), provided that the requirements set forth in this paragraph are met.**

**(1) The disadvantaged participant(s) to the joint venture must have: (i) Received an SDB certification from SBA; or (ii) Submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination regarding that application.**

The benefit of forming an SDB joint venture is that SDBs may be entitled to a price evaluation adjustment in competitive acquisitions in the authorized NAICS code.<sup>12</sup>

Under [13 CFR 124.1002\(f\)\(2\)](#), the SDB joint venture must have a limited, contract-specific life; its existence may not be ongoing.

**(2) For purposes of this paragraph, the term joint venture means two or more concerns forming an association to engage in and carry out a single, specific business venture for joint profit. Two or more concerns that form an ongoing relationship to conduct business would not be considered “joint venturers” within the meaning of this paragraph, and would also not be eligible to be certified as an SDB. The entity created by such a relationship would not be owned and controlled by one or more socially and economically disadvantaged individuals. Each contract for which a joint venture submits an offer will be evaluated on a case by case basis.**

If a small business is certified as an SDB with SBA, that small business can form a joint venture with another business on a consolidated procurement.

According to [13 CFR 124.1002\(f\)\(3\)](#), unless a joint venture falls into an affiliation exception recognized by [13 CFR 121.103\(f\)](#), an SDB that enters into a joint venture with one or more business concerns will be considered affiliated with such business concerns. In that case, the combined annual receipts or employees of all members of the joint venture will be considered in determining whether the joint venture meets the size status of the NAICS code.

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<sup>12</sup> As a practical matter, it is unlikely that SDBs will receive a price evaluation preference. DoD is required to suspend the regulations ([FAR 19.11](#) and [DFARS 219.11](#)) allowing for price evaluation preference for SDBs if the Secretary of Defense determines at the beginning of the fiscal year that DoD either met or exceeded the 5 percent goal for contract awards to SDBs. As a result, each year since 2000, the use of the price evaluation adjustment has been suspended.

**(3) Except as set forth in 13 CFR 121.103(h)(3), a concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated with such other concern(s) for size purposes. If the exception does not apply, the combined annual receipts for employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code designated for the contract.**

Under [13 CFR 124.1002\(h\)\(3\)](#), as noted above, an SDB can enjoy relaxed affiliation rules if it forms a joint venture with other businesses that are small according to the pertinent NAICS code, and if the procurement qualifies as a “bundled requirement.” SDB joint ventures are also not subject to the stringent affiliation rules if the procurement exceeds half the size standard for a revenue-based size standard, or the procurement exceeds \$10 million for an employee-based size standard.

SDB joint ventures are not limited to SDB set-asides. An SDB joint venture can compete on any non-8(a) federal procurement. Moreover, the affiliation rules are relaxed for SDB joint ventures pursuing competitive, bundled requirements.

## 8(A) JOINT VENTURES

The SBA Mentor-Protégé Program enables concerns certified as SDBs under Section 8(a) of the Small Business Act to form a joint venture with a mentor firm to pursue large, consolidated or bundled procurements. The 8(a) firm may form a joint venture with a large or small business under an SBA-approved 8(a) joint venture agreement. The joint venture is deemed small as long as the 8(a) protégé qualifies as small for the procurement (regardless of the size of the mentor).

An 8(a) protégé firm may form a joint venture with its SBA-approved mentor to pursue *any* type of federal contract procurement, not solely 8(a) procurements. This means that small businesses under an SBA-approved 8(a) mentor-protégé agreement may pursue bundled procurements that would not be issued under a FAR Part 19 set-aside or sole source authority. As a result, the Limitations on Subcontracting, performance-of-work requirements of [FAR 52.219-14](#), [FAR 52-219-3](#), and [FAR 52.219-27](#) would not apply. In other words, an SBA-approved 8(a) joint venture pursuing a large, bundled procurement need not worry about the percentage of work to be performed by the individual members of the joint venture.

The benefits of 8(a) joint ventures are as follows:

- ◆ The 8(a) protégé may form a joint venture with its SBA-approved mentor.
- ◆ The 8(a) joint venture may pursue *any* federal contract procurement, including consolidated or bundled procurements.

- ◆ The joint venture is deemed small as long as the 8(a) protégé is small.
- ◆ For large, bundled procurements, there are no performance-of-work requirements; in other words, individual members of the joint venture need not be concerned about who does what percentage of work.
- ◆ Mentors may own up to a 40 percent equity interest in a protégé and can thereby assist the protégé with raising capital under the SBA Mentor Protege Program.

## SDVOSB JOINT VENTURES

Service Disabled Veteran-Owned Small Business Concerns (SDVOSBs) may enter into joint venture agreements with one or more small business concerns, pursuant to [13 CFR 125.15\(b\)](#). SDVOSB joint ventures may submit an offer as a small business for a competitive procurement so long as each concern is small according to the pertinent NAICS code provided the procurement exceeds half the size standard for a revenue-based size standard, or the procurement exceeds \$10 million for an employee-based size standard. The SDVOSB joint venture status is not applicable to other procurements (e.g., sole source or those below the above dollar levels).

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

A Cooperative Research and Development Agreement (CRADA) is a written agreement between a government agency and a private company to work together on a project. Under a CRADA, the government agency and private entity form teams to solve technological and industrial problems. The CRADA enables small businesses in similar fields to come together and work with one or more federal laboratories. Under this arrangement, small businesses can pool resources and share risks to develop emerging technologies in a protected environment.

## PUBLIC-PRIVATE PARTNERSHIPS

A Public-Private Partnership (PPP) is a contractual risk-sharing agreement between a public agency and a private-sector entity. Through this agreement, the public and private-sector entities share skills and assets to deliver a service or facility for the use of the general public. PPPs are typically used to provide needed public facilities and infrastructure. For example, a private developer may build a building to agency specifications, and then operate the facility for a predetermined period of time; at the end of that period, the private developer will transfer the facility to the agency. Another example is a partnership in which a private developer or private team agrees to finance and construct a building and then to lease

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the building to the agency; the private entity would essentially maintain the property, acting like a landlord, under a contract with the agency.

In other types of PPP arrangements, the government may provide the capital investment and then run the operation jointly with the private sector. Alternatively, the private-sector entity may provide the capital investment in exchange for a contract with the government to provide agreed-upon services. Operation and maintenance contracts are also possible under a PPP. The public partner can contract with the private entity (which could be a small business team) to provide or maintain a specific service. The public partner could own the facility, yet have the private entity manage and maintain the facility.

The benefit of public-private partnerships is that small businesses may pool their resources and form an entity (such as a joint venture) to design, build, operate, or maintain a public asset. PPPs have been used in a variety of contexts, including real estate and buildings (urban redevelopment, office buildings, courthouses); transportation (airports, highways, toll roads); education (schools, recreational facilities, telecommunications infrastructures, research facilities); and water and wastewater (wastewater treatment plants).

## MENTOR-PROTÉGÉ ARRANGEMENTS

A small business can enter into a mentor-protégé arrangement with a more experienced business to pursue procurement opportunities as a joint venture. Mentor-protégé programs are designed to encourage more-established businesses to provide developmental assistance to small businesses to enhance their capabilities in performing federal procurement contracts. The objectives of mentor-protégé programs include fostering long-term relationships between the more established business and the small businesses and increasing the viability of the small business entities receiving federal contracts.

Two types of mentor-protégé programs apply to DoD: SBA Mentor-Protégé Program and DoD Mentor-Protégé Program.

### SBA Mentor-Protégé Program

The [SBA Mentor-Protégé Program](#) enables businesses certified as SDBs under Section 8(a) of the Small Business Act to form a joint venture with a mentor firm (either a large or small business) in pursuit of federal procurement contracts. As long as the 8(a) protégé qualifies as small for the procurement, the joint venture itself will be deemed small without regard to the size of the mentor.

### DoD Mentor-Protégé Program

Under the [DoD Mentor-Protégé Program](#), a protégé can team with a mentor, a more established business [FAR 19.702](#). A mentor firm must have at least one ac-

tive, approved subcontracting plan negotiated either with DoD or another federal agency and be eligible for Federal contracts. Protégé firms may be a SBA-certified SDB, SBA-certified SDB owned and controlled either by an Indian tribe or a Native Hawaiian Organization, a qualified organization employing the severely disabled, woman-owned small business, SBA-certified HUBZone small business, or a service-disabled veteran owned small business.

Unlike the SBA Mentor-Protégé Program, which permits protégés to form a joint venture with mentors, the DoD Mentor-Protégé Program contemplates that the mentor will provide subcontracting opportunities to the protégé.<sup>13</sup>

The DoD mentor-protégé arrangement is designed to provide mutual benefit both to the small business and to the more established mentor business. On the one hand, the protégé business receives invaluable technical, managerial, financial, or other types of developmental assistance from the mentor business, enabling the small business to improve contract performance. On the other hand, the mentor firm is eligible to receive either direct reimbursement for allowable costs of developmental assistance or credit toward the performance of subcontracting goals for acquisitions that require the submission of a subcontracting plan. Costs incurred by a mentor firm in assisting a protégé firm are allowable to the extent they are incurred in the performance of a contract identified in a mentor-protégé agreement, or are otherwise allowable in accordance with applicable cost principles.

## SUMMARY

Small businesses can form numerous types of team arrangements—teaming agreements, partnerships, mentor-protégé agreements, and various types of joint ventures—to pursue new or consolidated procurements. The fact that a business is small does not, alone, eliminate it from pursuing consolidated or bundled procurements. These various team arrangements enable small businesses to marshal complementary capabilities and, ultimately, to increase competitiveness in the federal procurement marketplace.

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<sup>13</sup> If the procurement is sufficiently large, the small business prime contractor and small business subcontractor may still keep their small business designation and avoid being viewed as affiliated entities. If the NAICS code is receipts based, then the dollar value of the procurement must exceed half of the size standard. If the applicable NAICS code is employee based, then the dollar value of the procurement must exceed \$10 million in order for the small business prime contractor and subcontractors to maintain their small business designation.

# Chapter 5

## SBA's Affiliation Regulations

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### Chapter Highlights

*In this chapter, we discuss SBA's affiliation rules and their impact on the size status of small business teams.*

## BACKGROUND

Small businesses may be reluctant to enter into teaming arrangements out of concern that the team members may be deemed to be “affiliated” and, therefore, other than small. Small businesses may fear that an other-than-small designation could prevent them from participating in federal government programs that are reserved for small businesses. As discussed below, this view seems to stem from a lack of understanding of SBA's affiliation rules and federal regulations.

## GENERAL RULE OF AFFILIATION

SBA's affiliation rules generally provide that entities are affiliates of one another when one entity has the ability or power to control the other or when a third party has the ability or power to control both. Actual exercise of control is not determinative. SBA looks at the ability or power to control another entity (see [13 CFR 121.103\(a\)](#)).

### **13 CFR 121.103(a) “General Principles of Affiliation**

**(1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.**

In determining whether entities are affiliated, SBA looks at such factors as ownership, management, ties to other concerns, and contract relationships.

### **13 CFR 121.103(a)**

**(2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.**

In evaluating the factor of control, SBA looks not only at affirmative control, but also at negative control. Negative control exists when a concern with a minority ownership interest is able to block action to be taken by another concern.

**13 CFR 121.103(a)**

**(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.**

It may be possible for an affiliation to exist through a third party.

**13 CFR 121.103(a)**

**(4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.**

SBA reviews the totality of the circumstances in assessing whether affiliation exists.

**13 CFR 121.103(a)**

**(5) In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.**

For teaming arrangements, SBA's general rule on affiliation is that the members of the joint venture or team are deemed affiliated for size determination purposes. In other words, the size of each team member is attributed to the total size of the joint venture or team (see [13 CFR 121.103\(h\)](#)).

**13 CFR 121.103(h)**

**(2) Except as provided in paragraph (h)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.**

Provisions such as those above, standing alone, would obviously make small businesses reluctant to form joint ventures. However, for small business teams competing for bundled requirements, SBA's affiliation rules provide special considerations that enable the small business team members to maintain their small business status.

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# EXCEPTIONS

## Bundled Requirements

As stated in [13 CFR 121.103\(h\)\(3\)\(i\)](#), SBA's affiliation rules provide for exclusion from affiliation when

- ◆ each concern is small and
- ◆ the procurement is a bundled requirement.

**13 CFR 121.103(h)(3)(i)**

**A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under this paragraph (f) so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided: (A) The procurement qualifies as a "bundled" requirement, at any dollar value, within the meaning of Sec. 125.2(d)(1)(i) of this chapter.**

## Other-Than-Bundled Requirements

If the procurement is not a bundled requirement, a joint venture or teaming arrangement may still submit an offer as a small business (see [13 CFR 121.103\(h\)\(3\)\(i\)](#)) in the following instances:

- ◆ For procurements with a receipts-based size standard, the dollar value of the procurement exceeds half the size standard.
- ◆ For procurements with an employee-based size standard, the dollar value of the procurement exceeds \$10 million.

**13 CFR 121.103(h)(3)(i)**

**A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under this paragraph (f) so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided: ... (B) The procurement is other than a "bundled" requirement within the meaning of Sec. 125.2(d)(1)(i) of this chapter, and:**

**(1) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or (2) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds \$10 million.**

Small businesses can take advantage of the relaxed affiliation rules and pursue bundled procurements regardless of dollar value, without fear of losing their small business status.

The FAR also provides for exclusion from affiliation for small business joint ventures pursuing bundled or large procurements. However, the FAR affiliation exception appears to be limited to joint ventures (see [FAR 19.101\(7\)\(i\)](#)).

**FAR 19.101(7)(i)**

**Definition of a joint venture for size determination purposes....**

- (A) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.**
- (B) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if–**
  - (1) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or**
  - (2) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.**

The SBA affiliation exceptions are broader than the FAR affiliation exceptions. Whereas the FAR size affiliation exception applies specifically to joint ventures, the SBA affiliation exceptions apply both to joint ventures and other teaming arrangements. However, the SBA ultimately decides questions regarding size determinations. Therefore, small business concerns that combine to pursue large or bundled procurements either as a joint venture or under another team arrangement should be able to rely on the broader SBA affiliation exceptions.

## 8(a) Mentor-Protégé Agreements

In addition to the exceptions noted above, concerns operating under an SBA-approved 8(a) mentor-protégé agreement under [13 CFR 124.520](#) are not subject to the general SBA affiliation rules as long as the protégé is small under the appropriate SBA size standard, and as long as the protégé has not exceeded the dollar limit contained in [13 CFR 124.519](#), (see [13 CFR 121.103\(h\)\(3\)\(iii\)](#)).

**13 CFR 121.103(h)(3)(iii)**

**(iii) Two firms approved by SBA to be a mentor and protégé under 13 CFR 124.520 may joint venture as a small business for any Federal Government procurement, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in 13 CFR 124.519.**

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## SUMMARY

Small businesses may have avoided teaming arrangements for fear that such arrangement could prove detrimental to their size status. Small businesses have feared that an other-than-small designation would preclude them from being able to pursue other opportunities afforded small businesses, such as small business set-asides. However, upon closer examination, it is apparent that the affiliation rules are not static. There are exceptions specifically designed to foster collaborations among small business concerns. For example, small business concerns can combine to pursue bundled procurements without fear of losing their small business size status. Also, the size of the procurement is important. If the procurement exceeds one-half of the size standard for a revenue-based procurement, or if the estimated value of the procurement exceeds \$10 million under an employee-based size standard, small businesses can collaborate without losing their size status. Without question, the affiliation rules and guidance are not straightforward. It is important both to educate small businesses regarding the affiliation rule exceptions and to encourage small businesses to combine forces to pursue large, consolidated, or bundled procurements.

# Chapter 6

## Seven Strategies to Facilitate Small Business Teaming

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### Chapter Highlights

*In this chapter, we discuss seven strategies to guide your team to successfully level the playing field for small businesses on large DoD contracts. These strategies range from acquisition team composition and planning through execution.*

## GETTING STARTED

Encouraging small business teams is an innovative, seldom-used tactic to combat the negative effect of consolidation on small business participation as a prime contractor. It requires a commitment to leveling the playing field for small business and the active involvement of your acquisition strategy team. To help you get started, we have identified seven key strategies to move your acquisition strategy team toward leveling the playing field for small business.

### Strategy 1: Conduct Research and Advanced Planning

To have a higher likelihood of success in encouraging small business teams to participate on solicitations, it is critical to begin developing plans early in the acquisition process. Deciding to encourage teams after you discover that requirements are consolidated beyond the reach of small business may be too late. You can begin by reviewing the requirements that are considered for consolidation:

- ◆ Note which small businesses are currently participating on these or similar requirements.
- ◆ Exchange information with other contracting activities that may have had similar consolidated requirements. What was their experience with small business participation? As prime contractors? As subcontractors? As teams?
- ◆ Conduct market research, identifying the various disciplines within the requirement that are suitable for small business participation.

### Strategy 2: Obtain Senior Management Support

Senior management support increases the likelihood of receiving buy-in for your project. For this reason, we urge you to obtain senior management support before

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you embark on a strategy to promote small business teams in your solicitation. Potential candidates for supporting small business teams include the director of small business programs, the head of your contracting activity, senior program managers, and managers of acquisition functions.

Remember the “selling points” of small business participation:

- ◆ Enhanced competition
- ◆ Fostering the growth of future competitors
- ◆ Reduced consolidation/bundling requirements
- ◆ Contribution to achievement of the contracting activity’s small business program goals.

### Strategy 3: Identify a Champion

Members of an acquisition strategy team may fail to appreciate the challenges faced by small businesses on consolidated requirements. Similarly, encouraging small business teams to compete for consolidated requirements is likely to be a new and untested contracting strategy for your organization. Identifying one or more small business champions to be part of your acquisition strategy team can alleviate these problems. The champion may be a small business subject matter expert (for example, the contracting activity’s small business specialist or an SBA representative), or he/she may be a technical expert with experience in fostering small business teams.

The champion’s roles are to

- ◆ prompt the acquisition strategy team to identify methods to foster small business teaming,
- ◆ identify avenues to overcome roadblocks to small business teaming, and
- ◆ serve as the overall advocate for small business participation on the requirement.

### Strategy 4: Work with the Small Business Community

All small businesses performing a contract requirement that is to be consolidated with one or more other requirements, and bundled, must be provided ample notification of the government’s intent, at least 30 days before the solicitation for the bundled requirement is issued. This is a very important point and one that could easily be overlooked when processing the solicitation. Always keep the small business contractors informed. Your communication with the small business

community not only displays your concern for their issues but also avoids misunderstandings.

Presolicitation conferences, industry days, requests for information, and “sources sought” advertisements can be useful tools in market research and in assessing the challenges to small business participation and teaming. Potential small business sources can provide useful information regarding the

- ◆ strategies that have been employed successfully by other government agencies,
- ◆ roadblocks within the structure of the proposed requirement that may negatively impact the formation of small business teams,
- ◆ lead-time necessary for forming teams, and
- ◆ capabilities available within the small business community.

## **Strategy 5: Assess the Challenges to Small Business Teams**

Considering the information gleaned from the experiences of the acquisition strategy team, other DoD and government agencies, and the small business community, the acquisition team should have a firm grasp on the stumbling blocks to small business participation and small business team formation. (Chapter 2 of this guidebook addresses the challenges faced by small business teams in competing for large consolidated requirements.)

If the requirement is, in fact, a consolidated and/or bundled requirement, your team will be required to identify alternative strategies that provide for more small business participation. Now is the time to identify what modification to your acquisition strategy will promote the formation of small business teams. The following are examples of some strategies you may explore:

- ◆ Break out requirements that may be suitable for participation by small business prime contractor teams
- ◆ Remove restrictions on location of contractor office or other geographic restrictions that limit small business participation
- ◆ Allow additional time for preparing the proposal
- ◆ Adjust the period of performance
- ◆ Use online registries of interested sources to foster teaming among potential sources.

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## Strategy 6: Design and Execute an Acquisition Strategy That Stimulates Small Business Teaming

Although it may sound simple, designing and executing your strategy is the most difficult step. It involves taking what you and your team have learned about the nature of your acquisition and the nature of the small business community that can support the acquisition and putting it into practice. The following are some tactics that your team may consider:

- ◆ When possible, eliminate restrictive qualification factors that may limit small business participation
- ◆ Incorporate incentives that foster small business team formation and participation
- ◆ Incorporate evaluation factors that can be utilized to positively consider small business teams
- ◆ Credit the past performance of all team members
- ◆ Develop performance metrics that consider small business team participation
- ◆ Provide web-based tools and templates that provide information on small business team formation
- ◆ Offer training in small business team development
- ◆ Ensure that payment provisions protect prompt payment interests of small businesses (considering advance payment, if appropriate)
- ◆ Develop innovative communications scenarios that include all primary team members.

In Chapter 7, we provide best practices from teams that have implemented one or more tactics to encourage small business teams on consolidated contracts.

## Strategy 7: Monitor, Document, and Share Results

By monitoring and documenting results, acquisition strategy teams can identify best practices and avoid repeating mistakes. Sharing your results with other acquisition professionals expands the knowledge base. This step can seem tedious, but it is critical to capturing the know-how gained so that your agency has a storehouse of experience to tap for future acquisitions.

Take the opportunity to

- ◆ share your successes through papers submitted to technical and acquisition periodicals and conferences,
- ◆ recognize the stellar performance of small business team members, and
- ◆ capture data on contract performance and adjust metrics, as needed.

## One Final Thought

Remember, successful teams have the buy-in and commitment of all the members. During this process, you may encounter resistance from within your team or your organization. Allowing sufficient time for the acquisition planning process and taking alternative viewpoints into consideration will help you avoid confusion, frustration, and conflict down the road.

## SUMMARY

Key strategies for leveling the playing field include planning early, obtaining senior management support, identifying a champion, working with the small business community, understanding the challenges to small business teams, developing and implementing alternative methods to stimulate small business, and monitoring, documenting, and sharing the results.

Fostering the formation of small business teams is a relatively new strategy, necessitated by the reduction in acquisition personnel, the expanding use of consolidated requirements within DoD, and the requirement to meet challenging small business participation goals. Implementing these strategies requires creativity and innovative thinking. This practice flourishes as we share information with other contracting activities, and similarly, it affords us the opportunity to learn from the experiences of others.



# Appendix A

## Case Study—Facilitating Small Business Joint Ventures

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This case study examines how an acquisition strategy team avoids contract bundling by encouraging a teaming relationship among small businesses.<sup>14</sup>

### THE REQUIREMENTS: AIRCRAFT MAINTENANCE AND BASE OPERATING SUPPORT

**Facilities management services**—operate and maintain real property and installed equipment, and manage and repair all base facilities (including utilities, lighting, and HVAC).

**Fire protection services**—provide for airfield crash rescue and fire response; base structural and family housing fire response; and base fire marshal, fire education, and fire inspection.

**Custodial services**—provide for custodial services for base facilities, family housing, and dormitories.

**Environmental monitoring services**—provide for environmental compliance monitoring, integrated pest management service, recycling, site maintenance (for roads, sidewalks, pavement, and fences), signage, refuse collection, and grounds and landscape upkeep.

**Logistics**—supply aircraft parts and base and aircraft material/equipment management and distribution, including fuels service, aircraft and vehicle fuel distribution, delivery, and storage management and services.

**Communications/information technology**—support base communications (telecommunications and messaging center management) and information management systems.

**Community services**—support community services such as linen exchange, child development center, youth activities, preschool/school age and teen programs (including operating the base childcare facility), library, bowling center, skills development (including operating the frame shop, wood working, crafts, and auto

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<sup>14</sup> For purposes of this study, the term “teaming” is used generically to refer to the various types of business arrangements defined in [FAR 9.601](#). See Chapter 4 “Types of Teaming Arrangements” for additional information.

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repair centers), fitness centers (including operating fitness/sports center and health and wellness center), base pools (including operations and staffing with life guards), equipment checkout, and outdoor recreation).

**Lodging services**—manage base lodging (hotel) facilities and family temporary lodging facilities.

**Base purchasing services**—procure an estimated \$12 million annually of items for base activities.

**Airfield management services**—manage support for base operations, including airfield runway and taxiway safety and operational inspections.

## BACKGROUND

Faced with a cutback in its budget, an activity decided to consolidate \$180 million of annual aircraft maintenance and base operations requirements. Driving the decision was the need to more efficiently administer 10 requirements, currently provided for in 37 separate contracts. Consolidating the contracts into a single acquisition would reduce time and costs and would help the agency operate within its new budget. An acquisition strategy team was assigned the task of implementing the consolidation.

## MARKET RESEARCH

The acquisition strategy team began by conducting research. The team found that all 10 requirements proposed for consolidation are separately suitable for award to small businesses. However, the aggregate dollar value of the proposed consolidation and the diversity of the requirements put it out of reach for a single small business as prime contractor. The team quickly learned that 60 percent of the current prime contract dollars (\$108 million) is awarded to small businesses. The team concluded that the proposed consolidation could displace small businesses as prime contractors and could potentially have a negative impact on the local economy. The team further concluded that the proposed acquisition would most likely result in a bundled contract.

Using the results of its initial research, the team decided to pursue an acquisition strategy to encourage small business teams to compete for the proposed consolidated/bundled requirements. This strategy would retain small business opportunities within the local community and would offer the efficiencies created by a single acquisition.

The team drafted an acquisition plan detailing the specific actions to execute their approach and implementation.<sup>15</sup> The plan included an acquisition schedule, shown in Table A-1.

Table A-1. Acquisition Schedule

Item	Date
RFI 1 (sources sought)	August 29, 2008
Issue notices to existing contractors <sup>a</sup>	August 29, 2008
RFI 1 responses due	October 5, 2008
RFI 2 (presolicitation notice)	October 25, 2008
Conduct industry conference	November 8, 2008
RFI 2 responses due	December 10, 2008
Issue RFC (requirements)	January 25, 2009
RFC responses due	March 1, 2009
Issue draft RFP	April 1, 2009
Draft RFP comments due	April 15, 2009
Issue final RFP	May 1, 2009
Proposals due	June 1, 2009
Award	August 30, 2009

Notes: RFC = request for comment, RFI = request for information, RFP = request for proposals.

<sup>a</sup> Because the potential award may be bundled, the government, at least 30 days prior to award, is required to notify the existing contractors of the government's intent to bundle these requirements. By notifying these firms, as early as possible, they are in a better position to form small business teams.

## OBTAINING SUPPORT

The acquisition strategy team recognized that its approach might receive resistance because it was innovative and untested. The team was convinced, however, that the approach could be successful and decided to obtain the support of senior management (the Base Commander, the Director, Small Business Programs, and the Head of Contracting). The team met with senior management and stressed the need to protect the local economy around the base and argued that by encouraging small business teams, they would save money by enhancing competition while simultaneously reducing the government's administrative burden.

<sup>15</sup> See [FAR Subpart 7.1](#) and [Defense Federal Acquisition Regulation Supplement \(DFARS\) Subpart 207.1](#).

Both the Base Commander and the Director, Small Business Programs asked to be kept informed of the team's progress, and they agreed to champion their cause, meeting with program management and other functional groups and local business organizations to gain their support.

## IMPLEMENTING THE ACQUISITION STRATEGY

The team scheduled a kickoff meeting with program management and engineering personnel. The Base Commander provided the opening remarks and explained the rationale for consolidating Aircraft Maintenance and Base Operating Support services. He also emphasized the need to support the small business program and asked the Director, Small Business Programs to elaborate on its importance.

Next, to gauge the small business community's interest, their capability to perform the anticipated work, and desire to form small business-led teams, the acquisition strategy team issued the following Sources Sought Notice via the [Federal Business Opportunities](#) (FedBizOpps) website.

### **Request for Information (Sources Sought Notice)**

#### **Description**

The Department is seeking qualified small businesses or small business-led teams and joint ventures that qualify under the North American Industry Classification System (NAICS) for Aircraft Maintenance and Base Operating Support services: (1) facilities management services, (2) fire protection services, (3) custodial services, (4) environmental monitoring services, (5) logistics, (6) communications/information technology, (7) community services, (8) lodging services, (9) base purchasing services, and (10) airfield management services.

This Sources Sought Notice is for the continuation of support that is currently provided through 37 separate contracts. This announcement is part of our market research, and your responses are sought to identify sources that have the knowledge, skills, and capability to provide the consolidated requirements. Interested contractors, including small businesses and small business-led teams that qualify under NAICS Code 561210 (Base Maintenance) are hereby invited to submit a response to the market survey of no more than five pages to demonstrate their technical, managerial and business capability to provide the requested services. It is anticipated that the Government will issue a time-and-materials contract for services rendered. The Government funding for this effort over the past several years has averaged \$180 million per year. The estimated period of performance is one base year and four 1-year option periods. THIS SOURCES SOUGHT NOTICE DOES NOT CONSTITUTE A REQUEST FOR A FORMAL PROPOSAL. This notice is provided as information to the marketplace and is an invitation for an expression of interest and demonstration of small business capability to perform the anticipated work. The Government will not pay for the provision of any information, nor will it compensate any respondents for the development of such information.

Contractors responding to this market survey must submit their responses via <http://www.ABC.gov> no later than 4:00 p.m. Eastern Time, October 5, 2009. Interested parties must register via the website before responding to this market survey. Instructions on how to submit your response can be found in the help document located on the website listed above. For technical assistance, firms should call 1-800-600-0000. All responses must provide the return e-mail address, mailing address, telephone number, and facsimile (fax) number. PLEASE BE ADVISED THAT ALL INFORMATION SUBMITTED WILL BE CONSIDERED PROCUREMENT SENSITIVE.

Responses were captured via the following market survey:

## **Market Survey**

### **General Information**

1. What is your company name, address, point of contact, phone number, and e-mail address?
2. What is your business size?
3. Do you have any corporate affiliations? If so, please identify.
4. Are you interested in participating as a leader or member of a small business-led team?
  - a. If so, specify what type of team arrangement (joint venture, prime contractor/subcontractor, other).
  - b. Provide a list of potential team members and associated disciplines, if known.
  - c. Describe your current/anticipated team management structure.
  - d. Explain any financing arrangements/options available to your team that would support performance under a time-and-materials contract with an anticipated annual value of \$180 million.

### **Past Performance Information**

5. Please provide any past performance information for the previous 3 years that clearly demonstrates familiarity and experience with one or more of the requirements. For each project, include the following information:
  - a. Size, term, and complexity of job;
  - b. Information on your role as either a prime contractor or subcontractor; and
  - c. Point of contact (POC) at the agency or prime contractor's organization to verify contact information, including name, address, e-mail address, telephone number, and information on the specific tasks you performed on the project.
6. Please provide a brief description of your experience either managing a team or acting as a member of a team of businesses working on large, complex projects. Provide POCs (name, address, e-mail address, and telephone number) that can verify this experience.

The acquisition strategy team received numerous responses to the market survey. After reviewing the responses, the team concluded that small businesses had sufficient capabilities and a strong interest in joint venture teaming. Considering this information, the team posted a Presolicitation Notice (see below) on the Fed-BizOpps website. An Industry Day Conference was included as part of this notice. The team hoped the conference would provide a forum for responding to questions and concerns, for obtaining input that might improve the acquisition, and for facilitating networking and team formation.

**Request for Information  
(Presolicitation Notice)**

**Description**

The Department is seeking qualified small businesses or small business-led teams and small business joint ventures that qualify under the North American Industry Classification System (NAICS) Code 561210 (Base Maintenance) for the following Aircraft Maintenance and Base Operating Support services: (1) facilities management services, (2) fire protection services, (3) custodial services, (4) environmental monitoring services, (5) logistics, (6) communications/information technology, (7) community services, (8) lodging services, (9) base purchasing services, and (10) airfield management services.

This announcement is being used to determine whether sufficient small business interest and capability exist for the requirements herein. It is anticipated that the Government will issue a time-and-materials contract for services rendered. The Government funding for this effort over the past several years has averaged \$180 million per year. The estimated period of performance is one base year and four 1-year option periods.

Offerors anticipating proposing a small business-led team, joint venture, or another form of teaming arrangement should review, in consultation with legal counsel, the Small Business Administration's (SBA) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 CFR 121). In particular, Offerors proposing a joint venture or another form of teaming arrangement should review 13 CFR 121.103, "What is affiliation?"

**Industry Day Conference**

This notice invites interested contractors to attend and participate in an Industry Day Conference on November 8, 2008, at the Municipal Convention Center Auditorium beginning at 9:00 a.m. The purpose of the Industry Day Conference is to gather input from interested contractors, to answer questions regarding this acquisition, to provide a networking forum for all interested parties, and to maximize opportunities for small business participation. Each contractor is limited to three attendees. In view of program operational requirements, attendance is limited to domestic contractors. Each attendee must present a valid photo ID (drivers license) to access the convention center auditorium. Please plan to arrive by 8:30 a.m. to allow time for security processing. Interested parties should register by close of business on November 1, 2008, at [www.industryday.ABC.gov](http://www.industryday.ABC.gov).

It is anticipated that the Small Business Administration (SBA) will brief industry on topics such as teaming arrangements and size standards and that an SBA representative will answer individual questions following the public forum. A question-and-answer session will be held following these presentations. Interested contractors are encouraged to submit questions in writing to the Contracting Officer prior to the Industry Day Conference, but no later than close of business November 1, 2008. All questions and their answers will be posted on Fed-BizOpps following the conference.

One-on-one meetings are available for the afternoon session to enable individual contractors or teams to ask questions and make comments and suggestions concerning the requirements and contracting strategy. Appointments will be scheduled and time allotted based on the number of contractors responding. Contractors are encouraged to attend as a team, rather than requesting separate one-on-one meetings. Firms requesting a session will be notified of appointment time and room location via e-mail. The following information must be provided to the Contract Specialist when requesting one-on-one sessions: firm name, number of people attending, point-of-contact name, phone number, and e-mail address.

**Request for Information  
(Presolicitation Notice)**

To facilitate open communication between the Government and contractors, we are extending an invitation for contractors to come in individually and meet with a small panel of Government personnel. This panel will include representatives from our Contracting, Engineering, Environmental and Base Maintenance divisions. Industry Day meetings with each interested contractor will be scheduled for approximately 1 hour each. Please telephone the point of contact. Any early comments and input you wish to provide prior to your meeting time are appreciated.

**Capability Information**

The contractor must be capable of integrating and managing all 10 requirements and safely performing these services in compliance with all environmental laws, meeting the Department's ISO 9001 quality and security standards. Further information on requirements can be found on the Department's website: <http://989.88.333.203/>. Interested entities must submit the following capability information to the website:

**A. Company Name, Address, and Contact Information**

Name of business; address; point of contact; telephone number; e-mail address.

**B. Type of Business/Arrangement**

1. Indicate all categories of small business that apply to the contractor, for example, Small Business Small Disadvantaged Business, 8(a) Business, Woman-Owned Small Business, Veteran-Owned Small Business.
2. If two or more businesses plan a joint venture or teaming arrangement, identify each company, the size status of the firm, and the type of arrangement contemplated.
3. Provide a statement as to whether your company or joint venture meets the size standard under NAICS Code 561210.

**C. Demonstrated Capability**

1. Provide a narrative that demonstrates the contractor's or joint venture's capability to perform the requirements contained in the draft SOW.
2. Provide a summary of your past performance within the last 3 years. Each contractor or joint venture's experience summary should include (a) name of project, (b) brief description of project, (c) contract or project number, (d) client/customer point of contact (name, address, phone), (e) dollar value of the contract/project, (f) period of performance of contract/project, (g) relevance of contract/project to agency's requirements described above, and (h) past performance rating demonstrating the capability of the contractor(s) to successfully perform the work described in the section above.
3. Explain any financing arrangements available to your team that would support performance under a time-and-materials contract with an anticipated annual value of \$180 million.

Your response must be limited to 20 pages. Contractors responding to this Presolicitation must submit their responses via <http://www.ABC.gov> no later than 4:00 p.m. Eastern Time, December 15, 2009. Please refer to the website for additional information or call Ms. Susan Campbell at 777-555-6666. The Department will not provide individual replies to the expressions of interest it receives.

THIS NOTICE IS NOT A REQUEST FOR PROPOSALS (RFP) AND DOES NOT COMMIT THE GOVERNMENT TO AWARD A CONTRACT. THE DEPARTMENT WILL NOT PAY THE COST OF PREPARING AN EXPRESSION OF INTEREST.

The acquisition strategy team extended invitations to the small businesses that responded to the presolicitation announcement. The Industry Day Conference included a briefing on the program objectives for each of the 10 requirements and a review of the acquisition schedule. The Small Business Administration (SBA) also briefed the offerors on the regulations regarding size and affiliation.<sup>16</sup>

During the question-and-answer period, it became clear that the small business attendees needed more time for preparing proposals. Some small businesses suggested that the activity's RFP provide for the crediting of past performance of all team members, rather than just the joint venture. They argued that a proposed joint venture would, in most cases, be a new entity with no past performance. They pointed out that crediting the past performance of all team members would be an equitable way to evaluate team capability.

## OUTCOME

The acquisition strategy team agreed to revise their plans to provide 90 days for proposal preparation. Table A-2 shows the revised acquisition schedule.

*Table A-2. Revised Acquisition Schedule*

Item	Date
RFI 1 (sources sought)	August 29, 2008
Issue notices to existing contractors <sup>a</sup>	August 29, 2008
RFI 1 responses due	October 5, 2008
RFI 2 (presolicitation notice)	October 25, 2008
Conduct industry conference	November 8, 2008
RFI 2 responses due	December 10, 2008
Issue RFC (requirements)	January 25, 2009
Request for comments due	March 1, 2009
Issue draft RFP	April 1, 2009
RFP response due	April 15, 2009
Issue final RFP	May 1, 2009
Proposal due	July 27, 2009
Award	October 1, 2009

<sup>a</sup> Because the potential award may be bundled, the government, at 30 days prior to award, is required to notify the existing contractors of the government's intent to bundle these requirements. By notifying these firms, as early as possible, they are in a better position to form small business teams.

<sup>16</sup> See Chapter 5 for a discussion of SBA affiliation rules.

The acquisition strategy team also agreed to credit the past performance of all team members. This strategy resulted in a significantly increased interest, by small businesses, in teaming to propose on the requirements and an increased likelihood that a small business team would win the award, thus resulting in a consolidated, but not bundled requirement. The acquisition team, however, together with the contracting officer, determined that in spite of the high likelihood of small business teaming, the requirement could not be set aside for small business because the likely respondents would not be able to comply with the FAR clause on the small business limitation on subcontracting.<sup>17</sup>

To ensure compliance with consolidation regulations, the contracting officer reviewed the following checklist and confirmed the completion of the following:

- ◆ Market research
- ◆ Identification of specific benefits expected to accrue as a result of the consolidation
- ◆ Benefit analysis
- ◆ Alternative strategies and rationale for not choosing them
- ◆ Small business action plan
- ◆ Senior Procurement Executive determination

The RFP was released for full-and-open competition. Small business-led teams were encouraged. Responses were received from scores of teams, including joint ventures. Some of these teams were composed entirely of small businesses; others included both large and small firms. The award was made to a small business joint venture team. The acquisition documented lessons learned and shared results with other teams.

## RESOURCES

[DoD Instruction 5000.2, Operation of the Defense Acquisition System.](#)

[Defense Acquisition Guidebook.](#)

[Defense Federal Acquisition Regulation Supplement.](#)

[DFARS Procedures, Guidance and Information.](#)

[AT&L Knowledge Sharing System.](#)

[Title 13, Part 121.103 of the Code of Federal Regulations.](#)

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<sup>17</sup> See [FAR 52-219-14](#).



## Appendix B

# Case Study—Facilitating Small Business Team Arrangements as Subcontractors

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This case study examines how an acquisition strategy team for a major weapons system mitigates contract bundling by encouraging subcontractor team arrangements among small businesses.

## THE REQUIREMENTS: ADVANCED MISSILE DEFENSE SYSTEM (AMDS)

**Research and development (R&D)**—conduct R&D on guidance systems platforms, propulsion systems technologies, security-related systems (e.g., physical and computer security), and Battle Management/Command and Control communications systems.

**Implementation of open architecture**—provide software and hardware data rights to the government to ensure that the AMDS architecture and implementation is open to third-party technology acquisition and insertion, as well as providing key hardware or software reuse configuration items to follow-on increments and other military systems.

**Development of system modules**—develop system modules for AMDS, including state-of-the-art guidance system, propulsion system, security-related systems, and Battle Management/Command and Control communications systems.

**Risk reduction design review**—support the AMDS Preliminary Design Review (PDR). The contract will include an option for full System Development and Demonstration activities, awarded based on the successful completion of the AMD PDR and Defense Acquisition Board authorization. The PDR is scheduled for September 2009, the Critical Design Review is scheduled for May 2010, and the Design Readiness Review is scheduled for April 2011.

**Prototype production**—meet an aggressive schedule that includes completion of all system modules, integration of system modules into a completed and qualified AMDS prototype, and testing within 24 months of contract award.

**Production**—provide for all material, labor, tooling, and test equipment required to produce and test hardware and software delivered under the contract.

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**Technical services**—provide for ongoing maintenance and technical services covering the following four core competencies: systems engineering, specialty engineering, developmental planning, and support engineering.

**Quality assurance program (QAP)**—establish an AMDS QAP within 12 months of contract award; conduct component testing during and after the missile assembly process, with simulations of missile and system components; and continue to ensure that quality assurance procedures are followed throughout the production, assembly, and test processes.

## BACKGROUND

An agency intends to award a 10-year contract to upgrade a missile defense system to a state-of-the-art Advanced Missile Defense System (AMDS). The estimated value of the proposed contract (including options) is \$5 billion. The North American Industry Classification System (NAICS) code for this acquisition is *336414 Guided Missile and Space Vehicle Manufacturing*.<sup>18</sup> The highly complex, high-dollar value weapons system is critical to meeting the agency's overall plans to support the war fighter. The acquisition will involve leading-edge research and development, the development of system modules, systems integration services, a prototype design, production, and a broad range of technical and quality assurance services.

When contracting for the existing missile defense system, the agency awarded 77 separate contracts valued at approximately \$4.2 billion. To streamline its current procurement process, leverage buying power, and obtain efficiencies from systems integration, the acquisition strategy team reasoned that it could save the agency significant time and cost if it consolidated the current eight requirements and awarded a single contract to a Lead Systems Integrator (LSI). However, the small business specialist (SBS), also a member of the acquisition strategy team, raised a concern about the displacement of small businesses as prime contractors.<sup>19</sup>

## MARKET RESEARCH

The contracting officer recommended that the acquisition strategy team begin by researching the acquisition history (see [FAR 7.107\(a\)](#)). She requested the assistance of the SBS to assess the impact of the proposed consolidation on small businesses (see [FAR10.001\(c\)\(1\)](#)).

The research revealed that large businesses currently provide the bulk of the existing missile defense system requirements. Only 2 of the 8 requirements (technical

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<sup>18</sup> The size standard for this NAICS code is 1,000 employees.

<sup>19</sup> [FAR 7.104\(d\)](#) requires coordination of the acquisition strategy with the activity SBS on every acquisition of \$7.5 million or more, unless the contract or order is entirely reserved or set aside for small business.

and QAP services) include small businesses participating as prime contractors. The team concluded that under the proposed consolidation, these small businesses would be displaced for two reasons: the aggregate dollar value of the proposed consolidation would be too large for a small business, and the diversity of the requirements would be beyond the capacity of a small business. Adding to this assessment, the contracting officer determined that the proposed consolidation would result in substantial bundling because its potential contract value (\$5 billion) would far exceed the \$7.5 million threshold established in FAR [7.104\(d\)](#). Therefore, the acquisition strategy team would need to conduct a benefit analysis to identify specific benefits and estimate savings for alternative strategies that would minimize the scope of the bundling.

The contracting officer also explained to the team that with the help of the SBS, the team would need to provide a rationale for not choosing an alternative and to make a specific determination that anticipated benefits justify bundling. Furthermore, the contracting officer advised the team that, as required by FAR [10.001\(c\)\(2\)](#), if a final determination is made to proceed with the bundled acquisition, the affected small businesses must be notified—30 days before the solicitation is released—of the government’s intent to bundle the requirements. The contracting officer next recommended that the team determine if the relative benefits and savings to the government justify bundling.

## ANTICIPATED BENEFITS AND SAVINGS

The program manager proposed that the acquisition strategy team identify the benefits and quantify the potential savings to the government for bundling all eight requirements.<sup>20</sup>

The SBS proposed an alternative strategy (Alternative Strategy 1). Under this scenario, the team would identify benefits and quantify the savings for unbundling \$200 million or 60 percent of the QAP production requirements from the planned acquisition. This would minimize the bundling because the agency would conduct a small business set-aside, awarding multiple contracts to small businesses to manage specific phases of QAP. The SBS argued that it would be in the government’s best interest not to award QAP production requirements to the LSI because it would not achieve the necessary independence in auditing. He also researched the [Central Contractor Registration](#) database and found that sufficient numbers of small businesses have the right set of skills to support this strategy.

The contracting officer suggested a second strategy (Alternative Strategy 2). She proposed that the team identify the benefits of conducting a set-aside for \$150 million, or 10 percent of the \$1.5 billion technical services requirements, especially requirements for which small businesses are prime contractors under the existing work. She reasoned that this approach would eliminate any displacement of small business. Another suggestion, to conduct a full-and-open competition, for

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<sup>20</sup> [FAR 7.107\(b\)](#).

technical services fell short because of the team’s desire to achieve the maximum benefits from systems integration by awarding the bulk of the technical services requirements to a single contractor.

To evaluate the proposed and alternative strategies, the team quantified the anticipated savings for five benefit categories. Tables B-1, B-2, and B-3 show the results.

The proposed strategy (Table B-1) would result in a consolidation and bundled contract and the team estimated a savings totaling \$605 million. The team reasoned that about half of the savings would come from price reductions (\$300 million) through negotiations with the prospective LSI.

*Table B-1. Savings with Proposed Strategy:  
Bundle Requirements*

Benefit category	Savings (\$M)
Administrative cost savings	200
Price reductions	300
Quality improvements	55
Reduction in acquisition cycle times	30
Better terms and conditions	20
Total	\$605M

Alternative Strategy 1 (Table B-2) would save an estimated \$67 million. Under this scenario, the agency would conduct a small business set-aside for 60 percent of the QAP production requirements—a function that, if performed independently from the LSI—may provide added value to the government. The team determined that most savings would come from reductions in price due to lower overhead rates from small businesses relative to their larger counterparts.

*Table B-2. Savings with Alternative Strategy 1:  
Set Aside QAP Requirements*

Benefit category	Savings (\$M)
Administrative cost savings	0
Price reductions	50
Quality improvements	15
Reduction in acquisition cycle times	0
Better terms and conditions	2
Total	\$67M

Alternative Strategy 2 would save the agency an estimated \$210 million for the benefit categories (Table B-3). Under this scenario, the agency would conduct a small business set-aside for \$150 million or ten percent of the \$1.5B technical services requirements.

*Table B-3. Savings with Alternative Strategy 2: Set Aside Technical Services Requirements*

Benefit category	Savings <sup>a</sup> (\$M)
Administrative cost savings	48
Price reductions	120
Quality improvements	20
Reduction in acquisition cycle times	20
Better terms and conditions	2
Total	210

<sup>a</sup> For consolidated acquisitions, a reduction of administrative or personnel costs alone is not a sufficient justification for proceeding with the acquisition unless the total amount of cost savings from these areas is expected to be *substantial* in relation to the total cost of the procurement. For bundled acquisitions, this exception is defined in terms of a quantifiable threshold.

## COMPARISON OF BENEFITS

The team applied the threshold test to determine whether the estimated benefits substantially exceeded the dollar threshold. As shown in Table B-4, the anticipated benefits from Alternative Strategy 1, \$67 million, and Alternative Strategy 2, \$210 million, are 1.3 and 4.2 percent, respectively, of the estimated contract value (\$5 billion, including options). Because the threshold test is 5 percent of the estimated contract value, neither Alternative Strategy 1 nor 2 meets the threshold test for bundling.

*Table B-4. Comparison of Strategies*

Strategy	Total savings (\$M)	Threshold test	Results
Proposed strategy—bundle requirements	\$605M	5.0%	12.1%
Alternative 1—set aside QAP requirements	\$67M	5.0%	1.3%
Alternative 2—set aside technical services requirements	\$210M	5.0%	4.2%

The team concluded that the benefits of the proposed strategy are superior. Moreover, the anticipated benefits of the proposed strategy, \$605 million or 12.1 percent of the estimated contract value *substantially* exceed the threshold test for

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bundling (5 percent of the estimated contract value, including options, or \$8.6 million, whichever is greater, if the value exceeds \$86 million).<sup>21</sup>

Considering the results, the team decided to conduct a full-and-open competition but stipulated that the QAP requirements must be subcontracted to reap the benefits of independent verification and validation.

## SMALL BUSINESS PARTICIPATION ACTION PLAN

With the comparison of alternative strategies and threshold test complete, the SBS reminded the team that the FAR calls for additional requirements for bundled acquisitions that involve substantial bundling.<sup>22</sup> He stated that because the cumulative maximum potential value, including options, of the contract (or order) is higher than \$7.5 million (substantially bundled), the team must provide additional documentation—a small business action plan—to the contracting officer before proceeding with the solicitation. The SBS emphasized that the action plan must identify strategies to mitigate the impact of the proposed bundling on small business.

With the help of the SBS, the team met to discuss ways to lessen the impact of the proposed bundling. As required by [FAR 7.107\(e\)](#) the team developed the following plan to ensure small business participation on the proposed contract:

- ◆ *Identify the specific benefits expected as a result of bundling the contract.* The team noted that the five benefits summarized in Table 1 for the proposed strategy amounted to \$605 million, or 12.1 percent of the estimated contract value of \$5 billion, including options.
- ◆ *Assess the specific impediments to small business participation in the contract.* The team identified first-tier manufacturing subcontracting as an impediment to the participation of a single small business, because the requirements (for example, system modules) would usually be more suited for large system integrators. Technical and QAP service requirements could also be a potential impediment, because the dollar value of the anticipated subcontract might be too large for a single small business.
- ◆ *Compose an action plan to maximize participation by small businesses as contractors, including efforts that will encourage small business teaming.* Most of the team members believed that small businesses would have significant opportunities as subcontractors on the proposed acquisition. However, because first-tier requirements were likely to be large in size and

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<sup>21</sup> If the results of the benefit analysis meet or exceed the threshold test, the acquisition strategy team may seek a final determination from the Senior Procurement Executive. If that determination is received, the team may proceed with the solicitation of the consolidated acquisition. Although the regulation provides no relief for consolidated requirements that do not meet the threshold test, the same is not true of bundled acquisitions.

<sup>22</sup> [FAR 7.107\(e\)](#).

dollar amount, and an obstacle for small business, the team proposed an action plan that called for motivating the prospective LSI and other large subcontractors to encourage small business teams to better enable them to compete for first-tier as well as second- and third-tier requirements.

- ◆ *Outline the specific steps that will be taken to ensure participation by small businesses as subcontractors.* The team outlined six steps:
  1. The team proposed conducting five industry outreach forums (e.g., matchmakers) in conjunction with prospective (large) prime contractors to determine small business interest and capabilities as subcontractors. The forums would be held in Washington, DC, Houston, TX, Chicago, IL, Denver, CO, and Los Angeles, CA, to identify prospective small businesses nationwide. Each forum would include a workshop on the subject of forming small business teams with government—Small Business Administration (SBA)—and industry experts to help support this initiative. This strategy would provide for a team approach to outreach via the government and large contractors to prospective small business subcontractors.
  2. To promote the subcontracting of “high-tech” requirements by offerors, to small businesses, the team proposed to include in the solicitation a separate evaluation factor (or subfactor) to encourage this behavior. They believed this strategy would provide an incentive to prospective large prime contractors to consider small businesses in their make-versus-buy and subcontract planning processes.
  3. As a way to encourage teaming arrangements, the team planned to provide for evaluation points and greater credit to offerors that have identified in their proposals, by name, protégé firms,<sup>23</sup> small business teaming partners, joint ventures, and small technology contractors that participate in the Small Business Innovation Research program.
  4. Because the opportunity for subcontracting to small businesses is significant, the team agreed to include a factor to evaluate past performance, indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans ([15 U.S.C. 637\(d\)\(4\)\(G\)\(ii\)](#)),<sup>24</sup> and a factor to evaluate proposed small business subcontracting participation in the subcontracting plan.<sup>25</sup> The team also decided to include a provision to ensure that offers from small businesses receive the highest rating for

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<sup>23</sup> Protégé firms are small businesses that are participating as protégés under an approved mentor-protégé program.

<sup>24</sup> [FAR 15.304\(c\)\(3\)\(iii\)](#).

<sup>25</sup> [FAR 15.304\(c\)\(5\)](#).

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the two factors. These factors would represent a meaningful part of the total evaluation.

5. To reward the LSI for meeting or exceeding its subcontracting plan goals, the team would provide for an award fee in the contract, enabling small business subcontracting performance to be measured and rewarded throughout the life of the contract.<sup>26</sup>
  6. The team would encourage offerors and major subcontractors to make subcontracting opportunities public in [Federal Business Opportunities](#) (FedBizOpps) using the Request for Information (RFI) process, when possible, to identify prospective small business team members early in the acquisition process. This strategy would provide for greater visibility of future subcontracting opportunities.
- ◆ *Determine whether the anticipated benefits justify the decision to bundle.* A decision to bundle requirements must be justified, regardless of the dollar value, based on the benefits that will accrue to the government. Considering the benefit calculation for Alternative Strategy 1, the team determined that the consolidation and bundling of the proposed contract is necessary and justified.<sup>27</sup> The team prepared the following documentation for the contract file:
- Market research
  - Identification of specific benefits expected to accrue as a result of the bundling
  - Benefit analysis
  - Alternative strategies and rationale for not choosing them
  - Assessment of specific roadblocks to small business participation
  - Small business action plan
  - Contracting officer or Service Acquisition Executive/Under Secretary of Defense/Acquisition Technology and Logistics determination
  - Senior Procurement Executive determination.

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<sup>26</sup> [FAR 19.705-1](#) and [52.219-10](#) provide examples of award-fee arrangements.

<sup>27</sup> The phrase “necessary and justified” is used consistently in the regulations and this guidebook. It describes both consolidated and bundled acquisitions for which sufficient justification warrants proceeding with the issuance of the solicitation.

## RESOURCES

[DoD Instruction 5000.2, Operation of the Defense Acquisition System.](#)

[Defense Acquisition Guidebook.](#)

[Defense Federal Acquisition Regulation Supplement.](#)

[DFARS Procedures, Guidance and Information.](#)

[AT&L Knowledge Sharing System.](#)

[Title 13, Part 121.103 of the Code of Federal Regulations.](#)



## Appendix C

# Case Study—Facilitating Small Business Team Arrangements as Prime Contractors

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This case study examines how an acquisition strategy team avoids contract bundling by encouraging teaming arrangements among small businesses.

## THE REQUIREMENTS: HUMAN RESOURCE (HR) SUPPORT SERVICES

**HR services**—provide personnel life-cycle planning, recruiting, and retention services; information technology (IT) services; career counseling services; pre-retirement, transition, and outplacement services; and family assistance counseling for all base facilities.

**Compensation services**—provide compensation and benefits planning services, including economic analyses services, cost/benefit studies related to compensation change, compensation planning support, labor market analysis and planning, and impact studies; compensation studies and analysis support, including the provision of recognized experts; and complete support of economic modeling and cost benefit analysis.

**Training services**—provide for classroom and online curriculum development covering initial and advanced skills training, sustainment training, and professional development training, tailoring programs for either classroom or distance learning curriculum to cover the needs of a widely dispersed military force; turn-key individual and group training; and advanced skill training in a classroom environment or in the field.

**Deployment and contingency planning services**—provide for the development, implementation, and operation of both current and new programs; guide users through the process of developing statements of work and then guide the requirement through the contracting process. This requirement includes force structure planning and modeling and program design and analysis.

**Employee assistance services site operation**—provide relocation centers, including cultural programs to acclimate personnel for foreign country assignments, group and individual counseling to address stress, cost implications, and other hardships related to permanent change of station orders; transition and outplacement services; separation and retirement processing for soldiers leaving active military service; and personnel security and security devices, including ID and

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security card development and issuance, and security clearance and security record maintenance services.

**Career development**—provide personal and career counseling, management development and training, marketing and advertising, force structure planning and shaping, career and skills training, second career training, and professional development.

**Relocation, base closure, and downsizing services**—provide individual and group counseling to cope with high-stress moments in a person’s life, including short-term counseling requirements and permanent counseling facilities, and provide planning and awareness programs to help achieve desired outcomes in high-stress situations affecting federal employee and local civilian populations.

**Retirement and separation services**—provide counseling services, training, and seminar programs, including advanced resume writing, job interview skills, and programs for developing strategies to conduct a successful job search in a chosen career field.

**Administrative services**—provide administrative services for human resource departments.

## BACKGROUND

Human resource requirements currently are provided to agency military and civilian personnel through more than 200 separate contracts at agency locations in the continental United States and overseas. In light of base closures, realignments, and increased deployments, the current contracts have undergone significant changes and modifications to adapt to the changing personnel requirements. These numerous changes have resulted in increased contract administration activity, including the processing and resolution of partial convenience terminations. Against this backdrop, the agency has been faced with a cutback in its budget. In view of these realities, the agency decided to consolidate, into a few contracts, nearly \$2.5 billion (over 5 years) of a wide range of human resource requirements. In order to preserve maximum flexibility, the agency considered issuing an indefinite-delivery, indefinite-quantity (“IDIQ”) type of contract. Consolidating those contracts into a few contracts would give the agency the flexibility it requires to satisfy its personnel needs—an essential attribute considering the changing personnel requirements in the face of base closures. This strategy would also provide commanders and managers a streamlined means of augmenting their existing workforce. In addition, this strategy it would reduce time and cost and would help the agency operate more efficiently. Moreover, this strategy would foster competition. An acquisition strategy team was assigned the task of implementing the consolidation.

## MARKET RESEARCH

The acquisition strategy team began by conducting research. It issued a Sources Sought Market Research Notice to determine the availability of potential small business concerns that possess in-depth knowledge in each of the nine areas. In addition, the acquisition strategy team invited small businesses to make presentations regarding their capabilities to perform the various requirements. The market research found that many of the nine requirements proposed for consolidation are separately suitable for award to small business. Small business firms demonstrated great depth of experience in some, but not all, of the subject areas. In addition, the aggregate dollar value of the proposed consolidation and the diversity of the requirements put it out of reach for a single small business as prime contractor. The team also recognized that some large businesses could perform all of the tasks. The team concluded that the proposed consolidation could displace small businesses as prime contractors and could potentially have a significant negative impact upon local economies nationwide. The team further concluded that the proposed acquisition would most likely result in a consolidated and bundled contract.

Using the results of its initial research, the team decides to pursue an acquisition strategy to encourage small businesses to form teaming arrangements with other small and possibly large businesses to compete for the proposed consolidated/bundled requirements. Recognizing that small businesses possess proven experience in some of the subject areas, the team decided that a better approach would be to divide the nine requirements into four subject areas and issue four requests for proposals (RFPs). The team divided the requirements as follows:

- ◆ Administrative support services
- ◆ Personnel services and support
- ◆ Recruiting and retention support services
- ◆ Studies and analyses.

The strategy of dividing the requirements into four (RFPs would enable small businesses to bid as prime contractors for contracts for which they have experience. Consequently, the strategy would address both purposes: retain small business opportunities, and realize efficiencies created by consolidated acquisitions. To maintain flexibility in meeting the agency's ever-changing personnel requirements, the agency determined that the best approach would be to award IDIQ contracts in a competitively managed multi-vendor contract environment. The multiple contractors would compete for individual task orders under the main contract vehicle. The team further determined that to maximize competition, it would award up to three contracts per RFP. The team wanted to provide for effective competition of firm-fixed-price and cost-reimbursable task orders, as appropriate, among a qualified group of contractors, including at least one small

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business source for each segment. Thus, each solicitation could result in a maximum of three contracts, with at least one contract awarded to a qualified small business. The small business would then compete for individual task orders with others who were awarded a basic contract for the same segment. Under this strategy, small businesses would have an opportunity to compete on the individual task orders, either as primes or prime joint venture partners. This approach, the team decided, would help to increase the utilization of small business and would ameliorate the negative effects of consolidation on small businesses and local economies.

After consulting with the activity small business specialist, the team realized that the proposed strategy, which provided for small business participation as a prime contractor, would not be considered a bundled acquisition, but would be a consolidated requirement. Because the value of the requirement exceeds \$5.5 million, the acquisition strategy must comply with the regulations by identifying alternative contracting approaches that would involve a lesser degree of consolidation.<sup>28</sup> The regulations also require a determination by the senior procurement executive (SPE) that the consolidation is necessary and justified, before the agency can proceed with the acquisition.<sup>29</sup>

In addition to the proposed strategy, the team considered three alternative strategies. The first strategy (Alternative 1) was to maintain the status quo, that is, to keep the 200 separate contracts for these services. This would minimize bundling by allowing maximum small business participation at the prime contracting level. Most team members believed that this strategy would be costly to maintain, but it was the strategy that promoted the least consolidation.

The second strategy (Alternative 2) was to award separate contracts for each of the nine task areas. Under this scenario, the small business specialist argued, small businesses with expertise in a specific task could participate as prime contractors through teaming with other large or small firms, thus retaining more prime contractor dollars for small firms.

The third strategy the team identified was to award six regional contracts for the consolidated requirements. Although Alternative 3 would still involve some consolidation, it would promote more participation of local small businesses as prime contractors or subcontractors. Some program managers argued, as well, that under this scenario, performance would be more responsive at the local (activity) level.

To evaluate the proposed and alternative strategies, the team quantified savings for five benefit categories. Tables C-1, C-2, C-3, and C-4 show the results.

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<sup>28</sup> [DFARS 207.170](#).

<sup>29</sup> *Id.*

The proposed strategy would save an estimated \$415 million (Table C-1). The team reasoned that the bulk of the savings would come from administrative cost savings due to the dramatic reduction in the number of contracts awarded and administered.

*Table C-1. Savings with Proposed Strategy:  
Consolidate Requirements into Four Areas*

Benefit category	Savings (\$M)
Administrative cost savings	200
Price reductions	80
Quality improvements	50
Reduction in acquisition cycle times	80
Better terms and conditions	5
Total	415

The agency would realize no savings from Alternative Strategy 1, which is the status quo (Table C-2).

*Table C-2. Savings with Alternative Strategy 1:  
Maintain the Status Quo (200 Contracts)*

Benefit category	Savings (\$M)
Administrative cost savings	0
Price reductions	0
Quality improvements	0
Reduction in acquisition cycle times	0
Better terms and conditions	0
Total	0

The team determined that Alternative Strategy 2 would save the agency an estimated \$380 million (Table C-3). Under this scenario, the agency would conduct separate solicitation and awards for each of the nine task areas. Although this alternative would still involve consolidation, it would be to a lesser degree than under the proposed strategy. The team noted that this alternative offered more potential to firms in specialized task areas, but it would require significantly more work on the part of the program management team to coordinate among the various major contractors, thus reducing administrative savings.

*Table C-3. Savings with Alternative Strategy 2:  
Separate Contracts by Task Area*

Benefit category	Savings <sup>a</sup> (\$M)
Administrative cost savings	100
Price reductions	40
Quality improvements	90
Reduction in acquisition cycle times	50
Better terms and conditions	100
Total	380

<sup>a</sup> For consolidated acquisitions, a reduction of administrative or personnel costs alone is not a sufficient justification for proceeding with the acquisition unless the total amount of cost savings from these areas is expected to be *substantial* in relation to the total cost of the procurement. For bundled acquisitions, this exception is defined in terms of a quantifiable threshold.

Alternative Strategy 3 would save an estimated \$390 million (Table C-4). Under this scenario, the agency would divide the performance area into six regions and conduct separate solicitations and awards for each of the regions. Like Alternative 2, this alternative would involve consolidation, but it would be to a lesser degree than under the proposed strategy. The team noted that Alternative 3 would offer more potential to local firms, but it would not provide the desired reduction in inconsistencies and inefficiencies that would result from the use of nationwide contracts.

*Table C-4. Savings with Alternative Strategy 3:  
Award Six Regional Contracts*

Benefit category	Savings <sup>a</sup> (\$M)
Administrative cost savings	100
Price reductions	45
Quality improvements	100
Reduction in acquisition cycle times	45
Better terms and conditions	100
Total	390

<sup>a</sup> For consolidated acquisitions, a reduction of administrative or personnel costs alone is not a sufficient justification for proceeding with the acquisition unless the total amount of cost savings from these areas is expected to be *substantial* in relation to the total cost of the procurement. For bundled acquisitions, this exception is defined in terms of a quantifiable threshold.

## COMPARISON OF BENEFITS

The team sought to determine whether the estimated benefits are sufficiently substantial to warrant proceeding with the proposed acquisition strategy. As shown in Table C-5, the anticipated benefits from Alternative Strategy 2, \$380 million, and Alternative 3, \$390 million, are 15.2 and 15.6 percent, respectively, of the estimated contract value (\$2.5 billion).

Table C-5. Comparison of Alternatives

Strategy	Total savings (\$M)	Results
Proposed strategy—consolidate requirements into four areas	415	16.6%
Alternative 1—maintain status quo (200 contracts)	0	0%
Alternative 2—consolidate requirements by task area (9 contracts)	380	15.2%
Alternative 3—consolidate requirements by region (6 contracts)	390	15.6%

If this were a bundled requirement, both strategies would meet the threshold test because the anticipated benefit is above 5 percent of the estimated contract value. The team, however, concluded that the benefits of the proposed strategy are superior, with anticipated benefits of \$415 million, or 16.6 percent of the estimated contract value, *substantially* exceeding<sup>30</sup> the (bundling) threshold test of 5 percent of the estimated contract value.<sup>31</sup> The team noted that administrative savings account for almost half of the savings under the proposed strategy, but because the contracting officer determined the savings to be substantial, the acquisition strategy team elected to proceed with the proposed strategy. The small business specialist noted that with the exception of Alternative Strategy 1, the proposed strategy would maximize the potential award of substantial prime contract dollars with small business firms.

The team prepared the following documentation for the contract file:

- ◆ Results of the market research
- ◆ Identification of specific benefits expected to accrue as a result of the consolidation

<sup>30</sup> Keep in mind that, for consolidations, all benefits need not be quantifiable and there is no dollar-value threshold defining what constitutes “substantially exceed.”

<sup>31</sup> If the results of the benefit analysis meet or exceed the threshold test, the acquisition strategy team may seek a final determination from the SPE. If that determination is received, the team may proceed with the solicitation of the consolidated acquisition. Although the regulation provides no relief for consolidated requirements that do not meet the threshold test, the same is not true of bundled acquisitions.

- ◆ Benefit analysis
- ◆ Alternative strategies and rationale for not choosing them
- ◆ Small business action plan
- ◆ SPE (or designee's) determination

The team then drafted a plan detailing the specific actions to execute the acquisition.<sup>32</sup> The plan included an acquisition schedule (Table C-6).

*Table C-6. Acquisition Schedule*

Item	Date
Sources sought marketing research	July 29, 2008
Issue notices to existing contractors	July 29, 2008
Sources sought responses due	August 29, 2008
Conduct small business presentations	September 15, 2008
RFI 1 (request for information)	October 1, 2008
Conduct one-on-one meetings	October 30, 2008
RFI 1 responses due	November 15, 2008
RFI 2 (presolicitation notice)	November 30, 2008
Conduct industry conference	December 15, 2008
RFI 2 responses due	January 3, 2009
Issue RFC	January 25, 2009
RFC responses due	March 1, 2009
Issue draft RFP	April 1, 2009
Draft RFP comments due	April 15, 2009
Issue final RFP	May 1, 2009
Proposals due	June 1, 2009
Award	August 30, 2009

Notes: RFC = request for comments, RFI = request for information, RFP = request for proposals.

## OBTAINING SUPPORT

The acquisition strategy team recognized that their innovative approach might face resistance. Therefore, they decided to obtain the support of senior management, including the HR Program Office, Base Commanders, the Director, Small Business Programs, and the Head of Contracting. The team met with senior management and stressed the need to protect the local economies around the bases.

<sup>32</sup> See [FAR Subpart 7.1](#) and [Defense Federal Acquisition Regulation Supplement \(DFARS\) Subpart 207.1](#).

The team argued that reserving one-third of the potential contracts for small businesses would encourage small business joint ventures and other small business alliances. They further stressed that the agency would save money by enhancing competition in a multivendor, competitively managed contract environment, while simultaneously reducing the government’s administrative burden.

The HR Program Office, the Base Commanders, and the Director, Small Business Programs agreed to support their efforts. Senior management decided to meet with and inform program management and other functional groups and local business organizations to gain their support.

## IMPLEMENTING THE ACQUISITION STRATEGY

The team scheduled a kickoff meeting with human resource personnel. The HR Program Office Commander provided the opening remarks and explained the rationale for consolidating Human Resource Support services. He also emphasized the need to support the small business program and asked the Director, Small Business Programs to elaborate on its importance.

Next, to gauge the small business community’s interest, their capability to perform the anticipated work, and desire to form small business-led teams, the acquisition strategy team issued the following Sources Sought Market Research Notice via the [Federal Business Opportunities](#) (FedBizOpps) website.

### Sources Sought Market Research Notice

#### Description

Sources Sought Market Research notice issued by the Contracting Center of Excellence (CCE) to determine the availability of potential small business concerns that possess in-depth knowledge in the entire spectrum of human resources: (1) planning, including personnel life-cycle actions such as force planning and modeling studies, recruiting plans, force distribution plans, training plans, deployment preparation plans, compensation and retention plans, force sustainability plans, and transition and assistance plans; (2) recruiting and retention services; (3) information technology (IT) services; (4) career counseling services, including preretirement, transition, and outplacement services; (5) family assistance counseling; (6) compensation services; (7) compensation and benefits planning; (8) compensation studies and analysis; (9) economic modeling and cost/benefit analysis; (10) training services, including online and classroom services, curriculum development, individual and group training, and advanced skills training; (11) career development, including personal and career counseling; (12) relocation base closure and downsizing services; (13) retirement and separation services; (14) deployment and contingency planning services, including force structure planning and modeling and program design and analysis; (15) employee assistance services site operation, including relocation, transition and outplacement services, and separation and retirement processing; (16) personal security and security devices; and (17) administrative support for human resource departments.

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### Sources Sought Market Research Notice (Continued)

In accordance with Federal Acquisition Regulation Part 19 and 13 CFR 126.607(b), this acquisition gives order of precedence to HUBZone 8(a) concerns, 8(a) concerns, HUBZone, Service-Disabled Veteran-Owned Small Business (SDVOSB), small businesses, and other-than-small business concerns. Responses to the announcement will be used with additional market research to determine if the acquisition will be set aside or procured with full-and-open competition. Interested parties must be able to demonstrate, in the capability statement, the related experience and ability to perform the kind of work described in this notice. Written capability statements (market survey) must be received no later than September 5, 2008, by 12:00 noon (EST). Contractors responding to the market Survey must submit their responses via <http://www.ABC.gov> no later than 4:00 p.m. Eastern Time, October 5, 2009.

Interested parties must register via the website before responding to this market survey. Instructions on how to submit your response can be found in the help document located on the website listed above. For technical assistance, firms should call 1-800-600-0000. All responses must provide the return e-mail address, mailing address, telephone number, and facsimile (fax) number. PLEASE BE ADVISED THAT ALL INFORMATION SUBMITTED WILL BE CONSIDERED PROCUREMENT SENSITIVE.

The Department is seeking qualified small businesses or small business-led teams and joint ventures that qualify under the North American Industry Classification System (NAICS) code for Human Resource Support Services.

This is not a request for proposals and this notice in no way commits the Government to award a contract. The Government does not intend to award a contract based solely on submissions to this Sources Sought Market Research Notice, nor does it intend to pay for any costs incurred in response to this announcement. All inquiries concerning this announcement must be directed to MAJ John Doe. Please, no telephone calls regarding this notice.

Point of Contact: John Doe.

E-mail your questions to CCE at [john.doe@abc.gov](mailto:john.doe@abc.gov).

Responses were captured via the following market survey:

## Market Survey

### General Information

1. What is your company name, address, point of contact, phone number, and e-mail address?
2. What is your business size?
3. Do you have any corporate affiliations? If so please identify them.
4. Are you interested in participating as a leader or member of a small business-led team?
  - a. If so, specify what type of team arrangement (joint venture, prime contractor/subcontractor, other).
  - b. Provide a list of potential team members and associated disciplines, if known.
  - c. Describe your current/anticipated team management structure.
  - d. Explain any financing arrangements/options available to your team that would support performance under a time-and-

materials contract with an anticipated annual value of \$180 million.

**Past Performance Information**

1. Please provide any past performance information for the previous 3 years that clearly demonstrates familiarity and experience with one or more of the requirements. For each project, include the following information:
  - a. Size, term, and complexity of job
  - b. Information on your role as either a prime or subcontractor
  - c. Point of contact (POC) at the agency or prime contractor’s organization to verify contact information, including name, address, e-mail address, and telephone number, and information on the specific tasks you performed on the project.
2. Please provide a brief description of your experience either managing a team or acting as a member of a team of businesses working on large complex projects. Provide POCs (name, address, e-mail address, and telephone number) that can verify this experience.

The acquisition strategy team received numerous responses to the market survey. After reviewing the responses, the team concluded that small businesses had sufficient capability and a strong interest in teaming with other businesses to cover the full range of requirements. The acquisition strategy team decided to post a Presolicitation Notice on the FedBizOpps website, inviting small businesses to make presentations regarding their capabilities.

<b>Presolicitation Notice</b>
As stated in the original notice dated July 29, 2008, DCC-W, on behalf of the Office of the Assistant Secretary, is seeking contractors to provide Human Resource Support Services. Four draft RFPs will be released, on or about April 1, 2009, instead of one RFP to cover all requirements as originally stated. The numbers of the draft RFPs are ABCW01-08-R-0001 (Transition Services), ABCW01-08-R-0002 (Studies and Analyses), ABCW01-08-R-0003 (Recruitment and Retention), and ABCW01-08-R-0004 (Administrative Support). After the draft RFPs are released, comments from industry on anticipated problem areas are invited. Comments are required in writing via e-mail to the addresses listed below. One-on-one meetings will be scheduled with contractors who wish to provide their comments orally, but comments must later be provided in writing. Meeting times will be limited and will be conducted as allowed by FAR 15.201, “Exchanges with Industry Before Receipt of Proposals.” Additional details will be in the transmittal documents of the draft RFPs. Industry comments will not be revealed to other than those in the Government who have a need to know and will be used as a basis for developing the final version of the RFPs. After release of the four final RFPs, the Government will hold a preproposal conference at which it will provide extensive information on the requirements and allow additional comments and questions. Interested Offerors must obtain a copy of the draft RFP by downloading the RFP from the ABC-W home page at the following address: <a href="http://abc.hqda.gov/services/RFP1.asp">http://abc.hqda.gov/services/RFP1.asp</a> . Telephonic requests will not be honored. E-mail point of contact is <a href="mailto:John.Doe@abc.gov">John.Doe@abc.gov</a> .

The acquisition strategy team was inundated with small businesses that presented their capabilities. As a result of the market research and the presentations, it seemed that opportunities existed for small business to perform some of the requirements as prime contractors and to possibly team with other businesses—both large and small—to fill other requirements.

Considering the capabilities presented, the acquisition strategy team was able to identify the components of the four segments of the requirement, with each segment having its own RFP. Using the four RFPs, contracts could be awarded to multiple contractors, with one contract per RFP going to a small business.

The acquisition team received a number of questions and comments from large and small businesses. Questions concerned whether contracts would be set aside or reserved for small businesses and whether it would be more beneficial and administratively economical to have a single RFP with multiple task orders rather than four RFPs. Concerns raised by businesses regarded such issues as whether a small business would lose its size status by proceeding as a prime contractor or by teaming with other small or large businesses. In addition, many businesses expressed an interest in being introduced to other interested businesses so that they could explore possible teaming arrangements. As a result of these questions and concerns, the acquisition team decided to hold an Industry Day Conference. The team issued the following notice on the FedBizOpps website.

**Request for Information  
(Presolicitation Notice)**

**Description**

The Department is seeking qualified businesses, including qualified small businesses or small business-led teams and small business joint ventures that qualify under the North American Industry Classification System (NAICS) Code 541612 (Human Resources) for the following Human Resource Support services: (1) administrative support services, (2) personnel services and support, (3) recruiting and retention support services, and (4) studies and analyses.

Offerors anticipating proposing a small business-led team, joint venture, or another form of teaming arrangement should review, in consultation with legal counsel, the Small Business Administration's (SBA) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 CFR 121). In particular, Offerors proposing a joint venture, or another form of teaming arrangement should review 13 CFR 121.103, "What is affiliation?"

**Industry Day Conference**

This notice invites interested contractors to attend and participate in an Industry Day Conference on December 15, 2008, at the Convention Center Auditorium beginning at 9:00 a.m. The purpose of the Industry Day Conference is to gather input from interested contractors, to answer questions regarding this acquisition, to provide a networking forum for all interested parties, and to maximize opportunities for small business participation. Each contractor is limited to three attendees. In view of program operational requirements, attendance is limited to domestic contractors. Each attendee must present a valid photo ID (drivers license) to access the Convention Center Auditorium. Please plan to arrive by 8:30 a.m. to allow time for security processing. Interested parties should register by close of business on November 30, 2008, at [www.industryday.ABC.gov](http://www.industryday.ABC.gov).

It is anticipated that the Small Business Administration (SBA) will brief industry on topics such as teaming arrangements, joint ventures, and size standards and that an SBA representative will answer individual questions following the public forum. A question-and-answer session will be held following these presentations. Interested contractors are encouraged to submit questions in writing to the Contracting Officer before the Industry Day, but not later than close of business November 30, 2008. All questions and their answers will be posted on FedBizOpps following the conference.

**Request for Information (Continued)  
(Presolicitation Notice)**

One-on-one meetings are available for the afternoon session to enable individual contractors or teams to ask questions and make comments and suggestions concerning the requirements and contracting strategy. Appointments will be scheduled and time allotted based on the number of contractors responding. Contractors are encouraged to attend as a team, rather than requesting separate one-on-one meetings. Firms requesting a session will be notified of appointment time and room location via e-mail. The following information must be provided to the Contract Specialist when requesting one-on-one sessions: firm name, number of people attending, point-of-contact name, phone number, and e-mail address.

To facilitate open communication between the Government and contractors, we are extending an invitation for contractors to come in individually and meet with a small panel of Government personnel. This panel will include representatives from our Contracting, and Human Resource divisions. Industry Day meetings with each interested contractor will be scheduled for approximately 1 hour each. Please telephone the point of contact. Any early comments and input you wish to provide before your meeting time are appreciated.

**Capability Information**

The contractor must be capable of integrating and managing all requirements within one or more of the four subject areas. Further information on requirements can be found on the Department website at <http://abc.88.333.203/>. Interested entities must submit the following capability information to the Department website:

**A. Company Name, Address, and Contact Information**

Name of business; address; point of contact; telephone number; e-mail address.

**B. Type of Business/Arrangement**

1. Indicate all categories of small business that apply to the contractor, for example, Small Business, Small Disadvantaged Business, 8(a) Business, Woman-Owned Small Business, Veteran-Owned Small Business.
2. If two or more businesses plan a joint venture or teaming arrangement, identify each company, the size status of the firm, and the type of arrangement contemplated.
3. Provide a statement as to whether your company or joint venture meets the size standard under NAICS Code 541612.

**C. Demonstrated Capability**

1. Provide a narrative that demonstrates the contractor's or joint venture's capability to perform the requirements contained in the draft SOW.
2. Provide a summary of your past performance within the last 3 years. Each contractor or joint venture's experience summary should include (a) name of project, (b) brief description of project, (c) contract or project number, (d) client/customer point of contact (name, address, phone), (e) dollar value of the contract/project, (f) period of performance of contract/project, (g) relevance of contract/project to agency's requirements described above, and (h) past performance rating demonstrating the capability of the contractor(s) to successfully perform the work described in the section above.
3. Explain any financing arrangements available to your team that would support performance under a time-and-materials contract with an anticipated annual value of \$180 million.

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Your response must be limited to 20 pages. Contractors responding to this Presolicitation must submit their responses via <http://www.ABC.gov> no later than 4:00 p.m. Eastern Time, December 15, 2009. Please refer to the website for additional information or call Mr. John Doe at 777-555-6666. The Department will not provide individual replies to the expressions of interest it receives.

**Request for Information (Continued)  
(Presolicitation Notice)**

THIS NOTICE IS NOT A REQUEST FOR PROPOSALS (RFP) AND DOES NOT COMMIT THE GOVERNMENT TO AWARD A CONTRACT. THE DEPARTMENT WILL NOT PAY THE COST OF PREPARING AN EXPRESSION OF INTEREST.

The acquisition strategy team extended invitations to the small businesses that responded to the presolicitation announcement. The Industry Day Conference included a briefing on the program objectives for each of the requirements and a review of the acquisition schedule. The SBA also briefed the offerors on the regulations regarding size and affiliation.<sup>33</sup>

During the question-and-answer period, it became clear that the small business attendees were concerned about how the agency would treat past performance of offerors forming new joint ventures or teaming arrangements. Some small businesses suggested that the agency's RFP credit the past performance of individual joint venture participants, rather than just the joint venture entity, arguing that a proposed joint venture would, in most cases, be a new entity with no past performance. They pointed out that crediting past performance of all joint venture members would be an equitable way to evaluate team capability. Some small businesses also suggested that the RFP credit the past performance of first-tier subcontractors when evaluating the past performance of the team.<sup>34</sup>

## OUTCOME

The acquisition strategy team agreed to credit the past performance of individual joint venture participants to the joint venture entity. The team also agreed to credit the past performance of subcontractors that will perform significant or critical aspects of the requirement. This strategy resulted in a significant interest in small business joint ventures proposing on the requirement as well as small business prime/sub teams. This, in turn, increased the pool of small businesses competing for the small business award. The RFPs were released, with one contract per RFP reserved for small business. Small business-led teams were encouraged. Responses were received from many teams, including joint ventures. Some of these teams were composed entirely of small businesses; others included both large and small firms. Twelve awards were made, with four going to small business joint

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<sup>33</sup> See Chapter 5 for a discussion of SBA affiliation rules.

<sup>34</sup> See [FAR 15.305\(a\)\(2\)\(iii\)](#) which permits consideration of past performance information of subcontractors that will perform major or critical aspects of the requirement.

ventures and teams. The acquisition team documented lessons learned and shared results with other teams.

## RESOURCES

[DoD Instruction 5000.2, Operation of the Defense Acquisition System.](#)

[Defense Acquisition Guidebook.](#)

[Defense Federal Acquisition Regulation Supplement.](#)

[DFARS Procedures, Guidance and Information.](#)

[AT&L Knowledge Sharing System.](#)

[Title 13, Part 121.103 of the Code of Federal Regulations.](#)



## Appendix D

# Case Study 4—Facilitating Small Business Subcontracting

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This case study examines how an acquisition strategy team mitigates contract consolidation and bundling by encouraging innovative subcontracting and other teaming relationships with small businesses.

## THE REQUIREMENTS: AGENCY-WIDE INTRANET (AWI)

**Security**—develop and maintain system to ensure that firewalls are fully operational and that intrusion detection and encryption processes are properly designed and operational.

**Network infrastructure**—provide an infrastructure that ensures adherence to standards, enhanced flow of information throughout the AWI, and adaptability necessary for a changeable environment, and ensure that effective change management policies and practices are in place.

**Connectivity services**—provide for connectivity and adequate speed of the operation of the AWI, ensure that interface with Secretariat-level functional units is achieved and maintained without interruption, and maintain connectivity for remote users.

**Enterprise support functions**—provide for a help desk, online help system, and round-the-clock technical support that are responsive to internal and external users of the network.

**Government and industry interoperability**—provide for interoperability between AWI and government and industry partners (internal and external users).

**Desktop hardware and common desktop software suite**—provide hardware and software suite appropriate to all users, including built-in refresh of software, as appropriate.

**Messaging**—ensure the creation, storage, exchange, and management of all messages sent over the AWI and enable legacy programs to communicate across different environments.

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**Directory services**—define types of information found in the existing and proposed network and enterprise directories, and identify a common document format to be used to display the contents of each directory.

**End-to-end network management**—provide end-to-end management of the AWI through a variety of tools that offer users varying levels of monitoring, control, and configuration capabilities. This includes the ability to automatically back up failed equipment, alert the operator of the failure, perform automated tasks, and translate proprietary protocols for the overall network manager.

## BACKGROUND

Faced with ever-increasing demands for new systems, security threats, and increasingly competitive and redundant legacy systems, the agency decided to consolidate \$1 billion of annual information technology (IT) requirements and create a new system that would interface across the agency, its industry partners, and other government agencies. This new system would, ultimately, supplant legacy systems through a process of identifying stakeholder requirements, identifying common elements, and developing common reports. In addition, the contractor for AWI would provide hardware, software, and technical support, as appropriate for all users, nationwide. Driving the agency's decision to consolidate these requirements was the need to administer the current 80 IT contracts more efficiently while taking advantage of efficiencies and communicability from the use of common data sets. A single contract would reduce time, cost, and manpower, helping the agency to operate within its drastically reduced budget. An acquisition strategy team was assigned the task of implementing the consolidation.

## MARKET RESEARCH

The acquisition strategy team began by conducting research. The team agreed that the aggregate dollar value of the proposed contract and the diversity of the requirements would put the proposed consolidation out of the reach of small businesses. The team quickly learned that 40 percent of the current prime contract dollars (\$400 million) is awarded to small businesses. The team concluded that the proposed bundled requirement would, therefore, displace small businesses as prime contractors and could potentially affect many local economies. The market research was conducted, with the assistance of the small business specialist (SBS), by issuing a request for information (RFI) and culling the [Central Contractor Registration](#) (CCR) and other source lists. As a result, the team found that 3 of the 10 requirements proposed for consolidation are separately suitable for award to small business. However, due to the size and scope of these requirements, the team concluded that it was unlikely that small businesses (or even small business teams) would be able to participate as a prime contractor. The size and scope of

the requirement made it suitable for only the largest IT firms. It was clearly a consolidated and bundled requirement.

Furthermore, the contracting officer determined that the proposed requirement would result in substantial bundling because its potential contract value (\$1 billion) would far exceed the \$ 7.5 million threshold established in [FAR 7.107\(e\)](#). As a result, the team would need to conduct a benefit analysis to identify specific benefits and estimate savings for alternative strategies that would minimize the scope of the bundling and consolidation.

The team found that because of the nature of the requirements and the scope of the work, the only alternative strategies that would afford more opportunities for small business participation at the prime contractor level were slight variations of the current multi-contract scenario: regional contracts and contracts by task.

To evaluate the proposed strategy and the alternatives, the team estimated savings in five benefit categories. Tables D-1, D-2, D-3, and D-4 show the results.

Under the proposed strategy, the agency would save an estimated \$235 million (Table D-1). The team reasoned that the bulk of the savings would come from administrative cost savings due to the dramatic reduction in the number of contracts awarded and administered.

*Table D-1. Savings with Proposed Strategy:  
Consolidate/Bundle All Requirements into a Single Award*

Benefit category	Savings <sup>a</sup> (\$M)
Administrative cost savings	200
Price reductions	5
Quality improvements	10
Reduction in acquisition cycle times	15
Better terms and conditions	5
Total	235

<sup>a</sup> For consolidated and bundled acquisitions, a reduction of administrative or personnel costs alone is not a sufficient justification for proceeding with the acquisition unless the total amount of cost savings from these areas is expected to be *substantial* in relation to the total cost of the procurement. For bundled acquisitions, this exception is defined in terms of a quantifiable threshold—ten percent of the total value of the acquisition.

Under Alternative Strategy 1, the agency would not realize any savings, because this alternative is the status quo (Table D-2).

*Table D-2. Savings with Alternative Strategy 1:  
Maintain the Status Quo (80 Contracts)*

Benefit category	Savings (\$M)
Administrative cost savings	0
Price reductions	0
Quality improvements	0
Reduction in acquisition cycle times	0
Better terms and conditions	0
Total	0

If it implemented Alternative Strategy 2 (Table D-3), the agency would save an estimated \$105 million in the five benefit categories. Under this scenario, the agency would conduct a separate solicitation and award for each of the eight regions covered by the AWI. Although this alternative would still involve consolidation, and most likely bundling, it would most probably result in a lesser degree of bundling and/or consolidation than under the proposed strategy. The team noted that this alternative offered more opportunity for maintaining the participation of local firms, but that this strategy would require more administrative oversight on the part of the agency to ensure coordination among the various firms, thus significantly reducing administrative savings. In addition, under this scenario, a single lead firm would need to develop the AWI.

*Table D-3. Savings with Alternative Strategy 2:  
Award Separate Contracts by Region (Eight Contracts)*

Benefit category	Savings (\$M)
Administrative cost savings	50
Price reductions	20
Quality improvements	10
Reduction in acquisition cycle times	35
Better terms and conditions	40
Total	105

Under Alternative Strategy 3, the agency would save an estimated \$126 million (Table D-4). This alternative would divide the performance area by task. Each successful contractor would be required to perform that task throughout the United States. Like Alternative Strategy 2, this alternative would involve consolidation, but it would be to a lesser degree than under the proposed strategy. The team also noted that although this alternative would offer more savings than Alternative Strategy 2, it would require increased administrative effort related to coordination among the contractors and would not afford any opportunities for

either small or local firms. As in Alternative Strategy 2, one contractor would need to be designated to lead the AWI developmental effort.

*Table D-4. Savings with Alternative Strategy 3:  
Award Separate Contracts by Task (Nine Contracts)*

Benefit category	Savings (\$M)
Administrative cost savings	5
Price reductions	15
Quality improvements	1
Reduction in acquisition cycle times	15
Better terms and conditions	90
Total	126

## COMPARISON OF BENEFITS

The team sought to determine whether the estimated benefits are sufficiently substantial to warrant proceeding with the proposed acquisition strategy. As shown in Table D-5, the anticipated benefits from Alternative Strategy 2, \$105 million, and Alternative Strategy 3, \$126 million, are 10.5 and 12.6 percent, respectively, of the estimated contract value (\$1 billion).

*Table D-5. Comparison of Alternatives*

Strategy	Total savings (\$M)	Percentage of estimated contract
Proposed strategy—consolidate/bundle all requirements (1 contract)	235	23.5%
Alternative Strategy 1—maintain the status quo (80 contracts)	0	0%
Alternative Strategy 2—award separate contracts by region (8 contracts)	105	10.5%
Alternative Strategy 3—award separate contracts by task (9 contracts)	126	12.6%

Both Alternative Strategy 3 and Alternative Strategy 4 meet the threshold test for bundled contracts since the anticipated benefit is greater than 5 percent of the estimated contract value.<sup>35</sup> However, the team concluded that the benefits of the Proposed Strategy are far superior, with anticipated benefits of \$235 million, or

<sup>35</sup> Measurably substantial benefits equivalent to five percent of the estimated contract or order value (including options) or \$8.6 million, whichever is greater, are required if the estimated value exceeds \$86 million. See [FAR 7.107\(b\)\(2\)](#).

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23.5 percent of the estimated contract value, *substantially* exceeding<sup>36</sup> the bundling threshold test.<sup>37</sup>

The team further noted that administrative savings in the Proposed Strategy accounted for more than 85 percent of the savings under this strategy. For consolidated and bundled acquisitions, a reduction of administrative or personnel costs, alone, is not a sufficient justification for proceeding with the acquisition unless the total amount of cost savings from these areas is expected to be *substantial* in relation to the total cost of the procurement. For bundled acquisitions, this exception is defined in terms of a quantifiable threshold—ten percent of the total value of the acquisition.<sup>38</sup> The administrative cost savings of \$200 million (see Table D-1) equates to 20 percent of \$1 billion—the total value of this acquisition. Thus the proposed strategy exceeds the administrative cost savings threshold and the contracting officer determines that the benefits are measurably substantial as compared to the benefits derived from contracting without bundling the acquisition (Alternative Strategy 1). Before proceeding with the acquisition, the team must also develop a small business action plan and seek a determination from the Senior Procurement Executive that the consolidation is necessary and justified, in order to comply with consolidation regulations.<sup>39</sup>

## OBTAINING SUPPORT

The acquisition strategy team recognized that its approach might receive significant resistance from the small business community. The Director, Small Business Programs and the Head of Procurement stressed the need to provide for continued small business participation on these requirements and to protect the local economies that would otherwise be affected by the proposed acquisition. It was clear that the agency needed to make a concerted effort to communicate the need for this strategy to the affected small businesses and, with their help, to craft a small business action plan that ensured significant small business participation at the first-tier and lower levels of subcontracting. In addition, the agency was required by the bundling regulations to notify incumbent small businesses, not less than 30 days before releasing a solicitation, of any proposed bundling that might affect existing contracts.

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<sup>36</sup> Keep in mind that, for consolidations, all benefits need not be quantifiable, and there is no dollar-value threshold defining what constitutes “substantially exceed.”

<sup>37</sup> If the results of the benefit analysis meet or exceed the threshold test, the acquisition strategy team may seek a final determination from the Senior Procurement Executive (SPE). If that determination is received, the team may proceed with the solicitation of the consolidated acquisition. Although the regulation provides no relief for consolidated requirements that do not meet the threshold test, the same is not true of bundled acquisitions.

<sup>38</sup> See [FAR 7.107\(d\)](#).

<sup>39</sup> [DFARS 207.170-3](#).

## SMALL BUSINESS ACTION PLAN

The team developed a list of potential prime contractors that would most likely respond to this consolidated and bundled requirement. A list of large prospective prime contractors was developed as a result of market research and the publication of a sources sought synopsis. In addition to providing information on their interest in the acquisition, contractors (both large and small) responding to the synopsis were invited to offer innovative ideas to enhance small business participation at first-tier and lower levels of subcontracting.

Because the proposed acquisition is bundled, the contracting officer is required to include the following in the plan:

- ◆ A factor to evaluate past performance indicating the extent to which the offeror attained small business participation goals under prior contracts;
- ◆ A factor to evaluate the proposed small business subcontracting utilization; and
- ◆ A provision ensuring that any offers from small businesses receive the highest rating for the two preceding factors.<sup>40</sup>

Concurrently, the Director, Small Business Programs met with other agency directors and the Small Business Administration seeking their experiences and recommendations for innovative small business subcontracting initiatives. The acquisition strategy team identified the following suggestions as being the most affordable and the most likely to be effective:

- ◆ Establish a mandatory minimum small business subcontracting level (in lieu of goals) at the current level of small business participation in these requirements (40 percent) and include proposed small business subcontracting as an evaluation factor.
- ◆ Establish evaluation factors for innovative small business partnering, including teaming with and among small businesses.
- ◆ Allow the prime contractor to receive credit toward a special contract-specific subcontracting goal for small business participation through the fourth tier.
- ◆ Give the prime contractor the authority to set aside requirements for small business firms.
- ◆ Encourage the prime contractor to create small business set-aside indefinite-delivery, indefinite-quantity (IDIQ) contracts to foster competition among small business firms for subcontracting opportunities.

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<sup>40</sup> See [FAR 15.304\(c\)\(3\)](#).

- ◆ Quarterly, monitor performance of the prime contractor in meeting these small business subcontracting provisions.
- ◆ Measure the prime contractor's performance toward meeting the small business subcontracting objectives using metrics such as the following: quantity of small business participation, level of sophistication of requirements provided to small business, and growth of small business share of the acquisition.
- ◆ Require the prime contractor to establish a training program for small business subcontractors. This training program should cover such topics as forming small business teams and obtaining quality assurance certifications. One way that contractors could provide this training is through the use of mentor-protégé programs.

## ENCOURAGING SMALL BUSINESS PARTICIPATION

The acquisition strategy team realized that as soon as industry became aware of this requirement, prime contractors would begin identifying team members. To ensure that all prospective small business subcontractors understood the nature of the requirements, understood the provisions for enhanced small business subcontracting, and had an opportunity to share their capabilities with prospective prime contractors, the agency scheduled a combined prime contractor and subcontractor Industry Day for the AWI. The team issued the following Sources Sought Notice on the [Federal Business Opportunity](#) (FedBizOpps) website.

### **Request for Information (Sources Sought Notice)**

#### **Description**

The Department is seeking qualified businesses, including small businesses or small business-led teams and joint ventures, to participate as either prime contractors or subcontractors in support of the development and maintenance of the Agency-Wide Intranet (AWI). The firms may identify their capability in one or more of the following areas: security, network infrastructure, connectivity services, enterprise support functions, government and industry interoperability, user training, messaging, directory services, and end-to-end network management.

This Sources Sought Notice is for the continuation and expansion of support that is currently provided through 80 separate contracts. This announcement is part of our market research, and your responses are sought to identify sources that have the knowledge, skills, and capability to participate as either a prime contractor on the entire effort or a subcontractor on one or more of these requirements. Potential prime contractors must be capable of integrating and managing all nine requirements and safely performing these services in compliance with appropriate quality standards.

Interested large business concerns are hereby invited to submit a capability statement of no more than five pages to demonstrate their technical, managerial, and business capability to provide and manage all of the nine requirements. Interested small business concerns, including small business-led teams and joint ventures, are hereby invited to submit a capability statement of no more than five pages to demonstrate their technical, managerial, and business capability to provide one or more of the nine requirements and a one-page summary of their capabilities and experience.

**Request for Information (Continued)  
(Sources Sought Notice)**

It is anticipated that the Government will issue an indefinite-delivery/indefinite-quantity (IDIQ) multiyear services contract for a base period of 7 years with an option for an additional period of 3 years. THIS SOURCES SOUGHT NOTICE DOES NOT CONSTITUTE A REQUEST FOR A FORMAL PROPOSAL. This notice is provided as information to the marketplace and is an invitation for an expression of interest and demonstration of capability to perform the anticipated work. The Government will not pay for the provision of any information, nor will it compensate any respondents for the development of such information.

Businesses responding to this market survey must submit their responses via <http://www.ABC.gov> no later than 4:00 p.m. Eastern Time, January 22, 2009. Interested parties must register via the website before responding to this market survey. Instructions on how to submit your response can be found in the help document located on the website listed above. For technical assistance, firms should call 1-800-600-0000. All responses must provide the return e-mail address, mailing address, telephone number, and facsimile (fax) number. PLEASE BE ADVISED THAT ALL INFORMATION SUBMITTED WILL BE CONSIDERED PROCUREMENT SENSITIVE.

The acquisition strategy team extended invitations to the large businesses and small businesses that responded to the presolicitation announcement. The team also invited all small firms that were incumbents on the existing requirements, specifically providing them notice of the government's intent to bundle these requirements significantly in advance of the required thirty day notice.<sup>41</sup>

Due to the volume of interest, participation in the AWI Industry Day was limited to two participants from each firm. The Under Secretary provided an overview of the agency's reasons for pursuing this bundled requirement and explained the agency's commitment to sustaining and enhancing the current levels of small business participation in these requirements. The program manager provided a briefing on the program objectives for each of the 10 requirements. The Head of Procurement and the Director, Small Business Programs discussed the acquisition schedule and the small business subcontracting action plan, respectively. One breakout session was held for large firms to discuss the small business subcontracting provisions in detail, and one session was held for small businesses to address teaming. In addition, all participants were provided with a list of the business firms represented at the Industry Day. The list included points of contact for each firm and contained summaries of the capabilities of each small business firm in attendance at the event. Time was given to allow networking and match-making among firms.

## OUTCOME

The acquisition strategy team agreed to revise the small business action plan to incorporate some of the suggestions from participants at the Industry Day event. The entire package, including the small business action plan was submitted to the SPE for a determination prior to proceeding with the solicitation. To ensure com-

<sup>41</sup> See [FAR 10.001\(c\)\(2\)](#).

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pliance with consolidation regulations, the contracting officer reviewed the following checklist and confirmed the completion of the following:

- ◆ Market research
- ◆ Identification of specific benefits expected to accrue as a result of the consolidation
- ◆ Benefit analysis
- ◆ Alternative strategies and rationale for not choosing them
- ◆ Small business action plan
- ◆ Senior Procurement Executive determination

The contracting officer released a draft solicitation under a Request for Comments notice. Sufficient time was permitted for comment by large and small firms. This was followed by a second Industry Day, held solely for the purpose of fostering teaming. An award was made to a large business firm that proposed 60 percent of the work would be performed by small business firms through the fourth tier.

## RESOURCES

[DoD Instruction 5000.2, Operation of the Defense Acquisition System.](#)

[Defense Acquisition Guidebook.](#)

[Defense Federal Acquisition Regulation Supplement.](#)

[DFARS Procedures, Guidance and Information.](#)

[AT&L Knowledge Sharing System.](#)

[Title 13, Part 121.103 of the Code of Federal Regulations.](#)

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