

GOVCON FUNDAMENTALS

TIPS FOR MAKING IT
IN THE FEDERAL
MARKETPLACE



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This presentation is not intended to be legal advice. If you have specific questions, please contact a government contracts attorney.



Legal updates for government contractors.



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Discussion summary

- Why small business size is a big deal
- Increasing competitiveness as a small business
 - Socioeconomic Programs
 - Teaming and Joint Ventures
 - Mentor/Protégé Relationships
- Ensuring performance success



WHY
BUSINESS SIZE
MATTERS

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Size Matters

- Small businesses play a vital role in federal contracting
 - Federal contract spending approaches \$1T each year
- Small Business Act
 - Sets goals for small business participation
 - $\geq 23\%$ of all prime contract awards to small businesses
 - Sole-source and set-aside opportunities
- Socioeconomic program eligibility





Small Business—Big Benefits

Socioeconomic program eligibility

- Firm must be small its primary NAICS code to qualify for 8(a) Program, SDVOSB, WOSB, and HUBZone
- Continuing size requirements

Set-aside/sole source contracts

- Must be small under solicitation's NAICS code
- General rule: if small at the time of bid submission, small for the entire contract

Importance of a Business's Size: Prime Contracts

Socioeconomic category	2020 %	2021 goal	2021 %	2021 \$
Small business	26.02%	23.00%	27.23%	\$154.2B
8(a)/SDB	10.54%	5.00%	11.01%	\$62.4B
WOSB	4.85%	5.00%	4.63%	\$26.2B
SDVOSB	4.28%	3.00%	4.41%	\$25.0B
HUBZone	2.44%	3.00%	2.53%	\$14.3B

Importance of a Business's Size: Subcontracting

Socioeconomic category	2020 %	2021 goal	2021 %	2021 \$
Small business	32.46%	29.36%	30.87%	\$72.0B
8(a)/SDB	4.40%	5.00%	4.44%	\$10.4B
WOSB	5.62%	5.00%	5.24%	\$12.2B
SDVOSB	2.14%	3.00%	2.25%	\$5.2B
HUBZone	1.65%	3.00%	1.60%	\$3.7B

INCREASING
COMPETITIVENESS
AS A SMALL
BUSINESS



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Federal Contracts are Competitive!

Best value v. LPTA

- Most contracts must now be awarded following a best value tradeoff
- Holistic analysis of opportunities
 - Technical capabilities
 - Past performance
 - Price

Agency not bound to award to the least expensive proposal

Tip 1: Limit Competition



Obtaining socioeconomic program designations can help limit the competitive pool

- Sole source
- Set-aside opportunities

Socioeconomic designations make valuable teaming targets

8(a) Business Development Program

51% owned and controlled by a socially and economically-disadvantaged person who is a United States citizen and is of good character

- Social: discrimination based on race, gender or other characteristics
- Economic: ability to compete has been impaired

- Must demonstrate the ability to succeed
- 11% prime contract goal
 - Goal increasing to 15%
 - FY21: 11.01% (\$62 B)

8(a) Business Development Program

9-year program term (10, for some)

- Restrictions on former participants and family

Must maintain eligibility

- Economic disadvantage thresholds
 - Annual income: \$400k
 - Net worth: \$850k
 - FMV all assets: \$6.5m
- Minimize reliance on 8(a) awards
 - Non-8(a) business activity targets
- Annual reviews

Construction? Bona fide place of business

8(a) Business Development Program

Restricted competition

- Once 8(a), Always 8(a)

Sole-source contracts

- Individually-owned 8(a) companies
 - \$7.5m (manufacturing)
 - \$4.5m (all others)
- Entity-owned 8(a) companies
 - \$100m (DoD)
 - \$25m (all others)

Woman (U.S. citizen) owns at least 51% and unconditional controls small business

- Works at business full-time
- Holds highest officer position
- Highest compensated

- No more self-certification

5% prime contract goal
- FY21: 4.63% (\$26.2B)



Woman-Owned Small Business

51% owned and unconditionally controlled by SDV

- Works at business full-time
- Holds highest officer position
- Highest compensated

- SBA and VA have different programs
 - VA-specific program
 - Sole source authority
 - Required preference for SD/VOSB

- 1/1/2023: governmentwide verification
 - Run by SBA

3% prime contract goal

- FY21: 4.41% (\$25.0B)

Service-Disabled Veteran- Owned Small Business

HUBZone Program



- Small business
- At least 51% owned by U.S. citizen(s)
- Principal office in a HUBZone
- At least 35% of employees live in a HUBZone
- Annual recertification
 - Must recertify status within 30 days of anniversary date
 - Once recertified, eligible for contracts throughout the year
 - Status determined as of the date of bid
- Full reviews every three years

Principal Office

- Company's **principal office** must be located in a HUBZone
 - Location where the greatest number of employees work
 - Construction: cannot be a job site
- Long-term investment
 - If long-term lease (10+ years) or purchase, will be considered to be in a HUBZone for at least 10 years after certification date even if area is later re-designated
 - Does not apply to co-leased spaces



35% Employee Residency

- At least 35 % of employees must reside in a HUBZone
 - Reside: live full-time, for at least 180 days
 - Must attempt to maintain residency requirement during performance of any HUBZone contract
 - If less than 20%, firm has not attempted to maintain
- Employee: full-time, part-time, or other basis
 - Must work at least 40 hours during month prior to application/recertification
 - Must perform legitimate work for the company
 - Does not include bona fide independent contractors or subcontractors



Legacy Employees

- SBA allows companies to claim credit for employees who have moved
 - Must live in a HUBZone for at least 180 days after (re)certification
 - Employment must be continued and uninterrupted
 - Seasonal employees that are laid off likely don't count
 - Not eligible
 - Employees living in a redesignated area or qualified disaster area
 - Companies with principal office in a redesignated area or qualified disaster area
- Maintain detailed records!

Tip 2: Make Friends



Small businesses can augment their capabilities by working with other companies

- Teaming
- Joint Ventures

Prime/Sub Teams



- Prime Contractor: privity of contract with government
 - Subcontracts portion of work to others
- Governed by state law, but federal implications
- Prime might be able to rely on subcontractor's past performance





Joint Ventures



- 2+ entities form a new entity (JV) who bids on contract
 - Performs through venturers
- Venturers must both be small (unless MPA)
- Must follow SBA joint venture requirements
- JV can rely on venturers' past performance

Tip 3:
Make A Friend . .
. With Benefits



Small businesses can augment capabilities through a mentor/protégé relationship

- SBA: governmentwide MPA
- Agencies have their own programs

SBA's Mentor/Protégé Program



Mentor agrees to provide business development assistance to protégé

- Assistance: anything a protégé might need to grow its business
- SBA reviews to ensure assistance is being provided

Benefits

- Business development assistance
- May form small business JV (even if mentor large)
- Capital infusions/equity
- Affiliation exemption

ENSURING
SUCCESSFUL
PERFORMANCE

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Tip 4: Know What You're Getting Into



- Good *past* performance starts with good performance
- Understand contract requirements before bidding
 - Terms bid against are the terms that will be included in the contract
 - Clarify unclear or restrictive requirements
 - Consider a pre-bid protest challenging the terms
 - Consider passing on a solicitation if the terms aren't right

Tip 5: Don't Be a Stranger

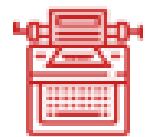


- Understand the lines of communication
- Maintain open communication with CO
 - Communicate issues *in writing*
 - Confirm scope/schedule/cost changes
- Keep detailed, contemporaneous records

Thank you!

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