

Small Business Perspective on Partnering for Small Business Procurements

Harry Fugate
Executive VP Business Development
Portage Inc.
hfugate@portageenv.com

5 years of SB Success! A Billion + Dollars in Successful DOE Prime Contracts Awarded

- Paducah Remediation Services
- LATA/Parallax Portsmouth, LLC
- CPE Environmental Services, LLC
- LATA-Sharp Remediation Services, LLC
- NAVARRO-GEM JV
- Stoller Navarro JV
- Accelerated Remediation Company

Demonstrated Ability to Execute!

Future SB Opportunities

- The Rules Changed for SBs in 2005
 - Public Law 109-13, the “Emergency Supplemental Appropriations Act of Defense, the Global War on Terror, and Tsunami Relief, 2005.” Section 6022
- Result - DOE does not have to meet the Government-wide statutory small business goals
- DOE’s current Facility Management Contracts (FMC) Approach pushes SB participation to the FMCs
- Result - in the EM Arena Low Margin Staff Augmentation contracts or High Risk Fixed Price contracts

Small Business Act goals vs DOE's 2007 "Maximum practicable opportunity for small business concerns."

Government-wide statutory small business goals

	Prime Contracts	Subcontracts
Small business	23 percent	40 percent
Small disadvantaged	5 percent	5 percent
Women-owned	5 percent	5 percent
HUBZone	3 percent	3 percent
Service-disabled veteran	3 percent	3 percent

DOE Small Business Goals

	Prime Contracts	Subcontracts under FMCs
Small business	4.42 percent	41.30 percent
Small disadvantaged	1.69 percent	6.33 percent
Women-owned	.39 percent	5.76 percent
HUBZone	.11 percent	2.22 percent
Service-disabled veteran	.08 percent	1.25 percent

Preparing for a New Administration

- Will we see a renewed commitment to SB Prime contracts?
- What will remain given the current use of 5 + 5 year extension FMC contracts?
- Will DOE retain the current large Prime SB contracts as SB set-asides?
- Small Businesses must continue to perform!

Small Business and MP Joint Ventures

- Allows SB's to Enhance their ability to Respond to Larger, Long Term, Complex Contracts
- Helps the Government Increase Opportunities for Small Business
- Build your firms personnel resources so that you can complete as a stand-alone prime on future large procurements
- contracts
- *Demonstrated Success Across Federal Agencies*

What is a small business joint venture (JV)?

- 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 (“3-2 rule”: Three JV submissions in two years.)
- Combining efforts, property, money, skill, or knowledge,
- But not on a continuing or permanent basis for conducting business generally.

Is your joint venture "small"?

- Combine total revenues or employees determine size.
- You may be a large business.
- So you are ineligible to compete for set-asides individually or as a joint venture.

Exceptions to the Rules

- Size regs at 13 CFR 121.103(h)(3):
- Bundled procurement of any dollar value.
- Large procurements - size standards:
 - receipts based size standard, the dollar value of the procurement exceeds $\frac{1}{2}$ the size standard.
 - For employee-based size standards the procurement is over \$10M.
- Often referred to as relaxed affiliation

Limitations on Subcontracting Apply

<p>Services Provide 50% of personnel costs</p>	<p>Supplies Provide 50% of cost of manufacturing, excluding materials</p>
<p>General Construction Perform 15% of cost of contract with own employees, excluding materials</p>	<p>Special Trade Construction Perform 25% of cost of contract with own employees, excluding materials</p>

Is your JV Team Affiliated

- Unusual reliance. Subcontractor that performs primary and vital requirements or a subcontractor upon which the prime contractor is unusually reliant.
- Affiliated? Subcontractor is treated as an affiliate so revenues or employees are combined to determine size.

Potential for Affiliation

- Others have power to control your business through:
 - Joint venture arrangements (for that “new small business”)
 - Common management
 - Identical business interests
 - Common stockholders
 - Ownership of multiple businesses
 - Contractual relationships

Does your Large Business Subcontractor have control?

- Ostensible subcontractor affiliation
 - Who will manage the contract?
 - Which party possesses the requisite background and expertise to carryout contract?
 - Who “chased” the contract?
 - What degree of collaboration was there on the bid?
 - Are there discrete tasks to be performed or is there a commingling of personnel and materials?
 - What is the relative amount of work to be performed by each?
 - Which party performs the most complex and costly contract functions

Finding the right SB Joint Venturers

- Your partners are often your competitors
- Sharing information during the bid process
- Defining roles and responsibilities
- Drafting a JV operation agreement that will work for all Venturers during project execution
- Working with Large Business Subcontractors

8(a) Mentor Protégé JVs

- For any federal government procurement:
 - an 8(a) protégé firm may joint venture with its SBA approved mentor.
 - The JV is small so long as the 8(a) protégé qualifies as small for the procurement.
 - Performance of work requirements apply to the cooperative effort of the JV.

8(a) MP Requirements

- JV can be formed with an “**other than small**” business mentor
- Competes as a small business any Federal procurement. (13 CFR 121.103(h)(3)(iii))
- 8(a) firm must manage and furnish project manager for JV.
- 8(a) firm must earn at least 51% of profits for JV.
- SBA approves each JV submission. JV is project specific.
- 8(a) mentor protégé agreement must be reviewed annually by SBA

Finding the right Mentor for an SBA 8(a) MP JV

- Finding an MP Friendly Large Businesses
 - Mentors are limited to one Protégé in a specific business area
 - Mentors must give up control of the JV
 - Continued Consolidation within the EM Industry
 - Getting past the one opportunity mentality

Industry (DOE) SBA MP Snapshot

- Recent SBA MP Experience in DOE markets
 - Shaw Group, CDM, Energy *Solutions*, Weston Solutions, Tetra Tech
- No Participation in SBA MPs targeting the DOE market
 - Bechtel, Fluor, Jacobs, URS, URS Washington Division, AE-COM, CH2M Hill

MP JV Challenges

- Over Reliance on Mentor's Bid and Proposal Infrastructure
- Who has the Key Personnel on Projects
- SBA JV Operating Agreement Requirements
 - (13 CFR 124.513 (c)(7)): A provision obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member.
- Aligning Interests of Mentor & Protégé
 - Business Development through Project Execution