

MISREPRESENTATION OF SMALL BUSINESS SIZE STANDARDS

Army Contracting Command – Aberdeen Proving Ground
Bryon J. Young
18 November 2014



SMALL BUSINESS SIZE STANDARDS

- Small business (SB) self-certifies as such in System for Award Management and also must meet size standard for industry classification of each individual contract
- Applicable size standard of each individual contract designated by Contracting Officer based on industry classification of the preponderance of goods/services being procured



MISREPRESENTATION OF SMALL BUSINESS SIZE STANDARDS

- 15 U.S. Code 645(d) provides severe criminal penalties for *knowingly* misrepresenting the SB size status of a concern in connection with procurement programs, including the following:
 - Fine of not more than \$500,000 or imprisonment for not more than 10 years, or both
 - Administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986
 - Suspension and debarment
 - Ineligibility for participation in any program or activity conducted under the authority the Small Business Investment Act of 1958 ([15](#) U.S.C. [661](#) et seq.) for a period not to exceed 3 years



EXAMPLE OF CASE OF SMALL BUSINESS SIZE CHALLENGE

- Requirement: Analytical and technical support of Army logistics strategy and related issues and processes
- SB standard
 - NAICS: 541990 (All Other Professional, Scientific, and Technical Services)
 - \$14.0M average annual receipts
- Source Selection Method: LPTA



EXAMPLE OF CASE OF SMALL BUSINESS SIZE CHALLENGE (CONTINUED)

- Offeror A apparent LPTA offeror
- Offeror B submitted a pre-award size challenge asserting Offeror A was not a SB within NAICS 541990
- SBA Decision:
 - Offeror A 100% owned by one individual whose wife is 100% owner of Company C
 - Taxes of both companies flow through to joint personal tax returns of married owners resulting in affiliation of companies
 - Because the average annual receipts of both companies combined for previous three years was >\$14M size standard, Offeror A determined to be Other than SB





NAICS and Size Program

Amy Kim, Size Specialist
Office of Government Contracting Area II

Topics Covered

- ❑ Definition of Small Business
- ❑ Size Standards
- ❑ NAICS Code Assignment
- ❑ Size Protests
- ❑ Affiliation Rules

What is a Small Business?

- ❑ Organized for profit
- ❑ Place of business in the U.S., operates primarily in the U.S., or makes a significant contribution to the U.S. economy (i.e. jobs, taxes, US products)
- ❑ Does not exceed revenue-based OR employee-based size standard for NAICS code
 - Each North American Industrial Classification System (NAICS) code has a small business size standard (wholesale and retail NAICS are not used in government procurements).

13 CFR 121.105

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Size Standards

SBA Size Standards



Sector 54 – Professional, Scientific and Technical Services

Subsector 541 – Professional, Scientific and Technical Services

541110	Offices of Lawyers	\$	11.0
541191	Title Abstract and Settlement Offices	\$	11.0
541199	All Other Legal Services	\$	11.0
541211	Offices of Certified Public Accountants	\$	20.5
541213	Tax Preparation Services	\$	20.5
541214	Payroll Services	\$	20.5
541219	Other Accounting Services	\$	20.5
541310	Architectural Services	\$	7.5
541320	Landscape Architectural Services	\$	7.5
541330	Engineering Services	\$	15.0
541330_a_Except	Military and Aerospace Equipment and Military Weapons	\$	38.5
541330_b_Except	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	\$	38.5
541330_c_Except	Marine Engineering and Naval Architecture	\$	38.5
541340	Drafting Services	\$	7.5
541350	Building Inspection Services	\$	7.5
541360	Geophysical Surveying and Mapping Services	\$	15.0

It's important to recognize that a firm can be small for some NAICS while at the same time be 'other than small' (large) for others.

www.sba.gov/tools/size-standards-tool



Average Annual Receipts (AAR)

- ❑ Use Federal Tax Returns
- ❑ Cost of Goods Sold plus Total Income
- ❑ Average of last three completed fiscal years
- ❑ Use AARs for all receipts-based NAICS
- ❑ The calculation of AAR is the same for all SBA programs, including 8(a).



13 CFR 121.104

Example 2: Total Receipts = COGS + Total Income

Total Revenue = \$8,888,888

Form 1120S	U.S. Income Tax Return for an S Corporation		OMB No. 1545-0130
Department of the Treasury Internal Revenue Service	▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation. ▶ Information about Form 1120S and its separate instructions is at www.irs.gov/form1120s .		2012
For calendar year 2012 or tax year beginning January 1 , 2012, ending December 31 , 20 12			
A S election effective date	TYPE OR PRINT	Name DFE Co.	D Employer identification number
B Business activity code number (see instructions)		Number, street, and room or suite no. If a P.O. box, see instructions. 456 Main St.	E Date incorporated 3/2010
C Check if Sch. M-3 attached <input type="checkbox"/>		City or town, state, and ZIP code New York City, NY	F Total assets (see instructions) \$ 5,000,000
G Is the corporation electing to be an S corporation beginning with this tax year? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," attach Form 2553 if not already filed			
H Check if: (1) <input type="checkbox"/> Final return (2) <input type="checkbox"/> Name change (3) <input type="checkbox"/> Address change (4) <input type="checkbox"/> Amended return (5) <input type="checkbox"/> S election termination or revocation			
I Enter the number of shareholders who were shareholders during any part of the tax year ▶			
Caution. Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.			

Income	1 a Gross receipts or sales	1 a	7,888,888		
	b Returns and allowances	1 b			
	c Balance. Subtract line 1b from line 1a	1 c	7,888,888		
	2 Cost of goods sold (attach Form 1125-A)	2	1,234,567		
	3 Gross profit. Subtract line 2 from line 1c	3	6,654,321		
	4 Net gain (loss) from Form 4797, line 17 (attach Form 4797)	4			
5 Other income (loss) (see instructions—attach statement)	5	1,000,000			
6 Total income (loss). Add lines 3 through 5 ▶	6	7,654,321			
ations)	7 Compensation of officers	7			
	8 Salaries and wages (less employment credits)	8			

See Statement 1



Number of Employees

- ❑ Count all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern.
- ❑ Numbers of employees for each of the pay periods for the preceding completed 12 calendar months (running average).
- ❑ Payroll records / IRS Form 941

13 CFR 121.106



Employee Count Example: 1

Firm Exceeds Size Standard

NUMBER OF PERSONS EMPLOYED

During the 12 Months Preceding the Bid/Offer

From: Feb-12

To: Feb-13

(Include all Full-time, Part-time and Temporary Employees)

<u>Month</u>	<u>No. of Employees Paid Monthly</u>
1	490
2	490
3	490
4	490
5	490
6	490
7	490
8	500
9	520
10	520
11	520
12	520
Total # of Employees From Above:	6010
Divide by Number of Months	12
Average Number of Employees per Month	501

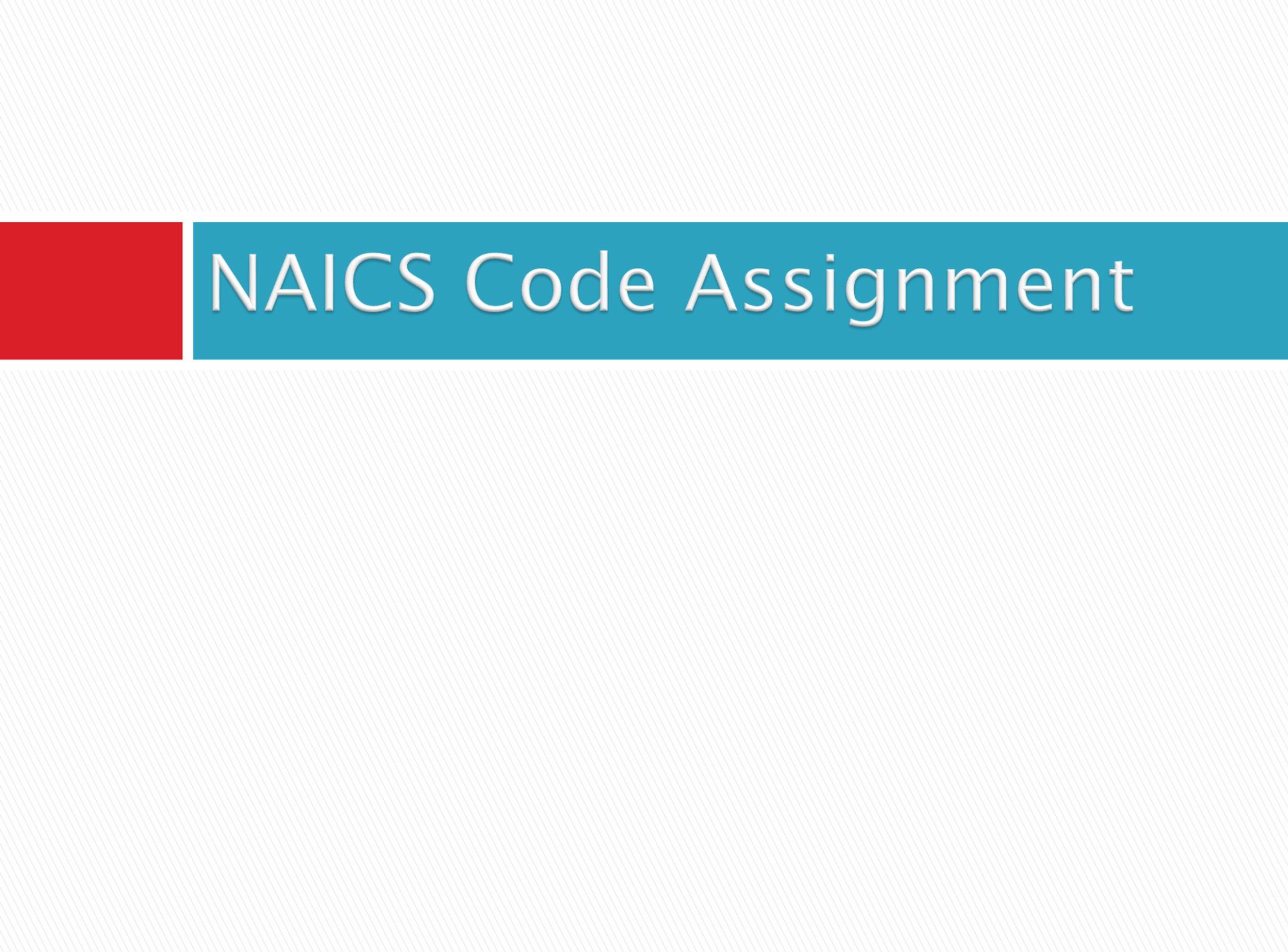
Company Name ABC Co.

Note: The above form should be completed for the applicant and each of its affiliates.



Size Standard Updates

- ❑ Proposed rule for employee-based size standards for NAICS Sectors 42 (Wholesale) and 44, 45 (Retail). Comments due on 7/18/2014.
- ❑ Interim final rule for monetary size standards effective as of July 14, 2014. Comments due on 8/11/14.
- ❑ Proposed rule for employee-based size standards in Sector 31–33 (Manufacturing). Comments due on 11/10/14.
- ❑ Proposed rule for employee-based size standards not in Sectors 31–33, 42 or 44–45. Comments due on 11/10/14.
 - Eliminate IT valued added resellers “exception” under NAICS 541519 and 150-employee size standard.

The slide features a white background with a light gray grid pattern. A horizontal bar at the top is divided into a red section on the left and a teal section on the right. The text "NAICS Code Assignment" is centered in the teal section in a white, sans-serif font.

NAICS Code Assignment

NAICS Code Assignment

- ❑ CO must designate in *solicitation* NAICS code that best describes *principal* purpose of product or service being acquired.
- ❑ Perfect NAICS code might not apply. Consider
 - What is the government buying?
 - What accounts for greatest percentage of contract value?
 - Must be incorporated in solicitation or amendments
 - Supplies acquisition must be under manufacturing NAICS; SB must meet NMR for supplies contract set-aside for SB.

13 CFR 121.402

NAICS Code Assignment (Continued)

□ Consider

- MAE&MW exception – NAICS code 541330, Engineering Services
 - Appropriate for automatic test equipment for Navy aircraft weapons; for weapons testing and evaluation
 - Must involve professional engineering services with military or aerospace application
- NAICS 541712, Research and Development Physical, Engineering Life Sciences
 - Must be for research and development and look to creating new processes or products.
- No NAICS selection should be made based on competition level

13 CFR 121.402



NAICS Code Assignment – MAC

- NAICS codes must be assigned to all MACs and Orders issued.
 - Single NAICS code must be designated for each order.
 - No single NAICS code applies? CO can apply multiple codes only if divided into discrete categories (i.e. CLIN, SIN). CO must assign a NAICS code to each discrete category. Orders placed against each category are assigned the same NAICS Code.
 - Agency will receive Small Business credit only if the Small Business receiving Order is small under NAICS Code assigned to the Order.

13 CFR 121.402



Size Protests

Size Protests

- ❑ All size protests, irrespective of when received and regardless of any other office's opinion as to validity.
- ❑ Size protests that are not specific or were received late (even post-award) **must** be forwarded to SBA.
- ❑ Protests are decided by the SBA GC Area Office with jurisdiction over location of headquarters of protested concern (not its parent).
- ❑ If you're unsure if something constitutes a protest, consult with the appropriate SBA GC Area Office.

13 CFR 121.1006



Size Protest for Long-Term Contracts

If the contract at issue is a long term contract of over 5 years' duration, a protest may be filed at 3 times:

- 1) Within 5 days of award notification of the contract itself;
- 2) Within 5 days of notification of the exercise of an option; or
- 3) Within 5 days of award notification an individual order where the contracting officer has requested size certifications.

13 CFR 121.1004



Size Protest for Long-Term Contracts

- ❑ Protests made at any other time will be dismissed as untimely.
- ❑ A CO's request for a size certification must include a NAICS code and size standard to be an effective request for a certification.
- ❑ Very important that if a CO is or is not requiring a size certification, make it as clear as possible.

Size Self-Certification Requirements – MAC

- ❑ Small Businesses must certify their size status in accordance with NAICS codes assigned to MAC.
- ❑ For MACs, “self-certification” is at time of initial offer including price.
- ❑ For Agreements such as BPAs, BAs, BOAs, “Size” is determined ***at time of response to the solicitation for agreement***. Because Agreements are not Contracts under FAR, SB credit is applied only if SB qualifies as small ***at time of order***.
- ❑ For BPAs issued against GSA MAS Contracts, “Size” is determined at time of offer on the Contract.
- ❑ Recertification requirements apply if a Small Business acquires another business or is acquired, or is part of a Joint Venture involved in a merger or acquisition.

Size Determinations are Binding

- ❑ “Formal size determinations and NAICS code designations made by authorized SBA officials are binding upon the parties.” 13 CFR 121.403.
- ❑ Only GC Area Offices are authorized to make formal size determinations. SBA Regional or District Offices have no jurisdiction or authority to make formal size determinations. 13 CFR 121.1002.
- ❑ Companies found to be other than small are required to amend their DSBS/SAM listings and to notify any COs to whom they self-certified their size as a SB in the intervening period. 13 CFR 121.1009(g)(5).

Recertification

- ❑ A concern may request SBA to recertify it as a small business at any time.
- ❑ The prohibition against future self-certification does not apply if the adverse size determination is limited to a specific procurement.
- ❑ A denial of an application for recertification is a formal size determination.
- ❑ The granting of an application for recertification has future effect only.

13 CFR 121.1010

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Affiliation Rules

Affiliation

- ❑ What is an affiliate?
- ❑ When one controls or has the power to control another through:
 - Common ownership
 - Common management
 - Identity of interest (family members, common investments, dependence through contractual or economic relationships)
 - A newly organized concern
 - Joint ventures
 - Negative control
- ❑ It does not matter whether control is exercised.

13 CFR 121.103

Two Types of Affiliation

- ❑ General Affiliation
 - Ongoing basis
 - Common ownership, management, identity of interest, etc.
 - Applies to the firm in all business transactions

- ❑ Applies to a specific procurement
 - Joint venture (ostensible subcontracting)
 - Nonmanufacturers rule (NMR)
 - Applies only to the contract at hand

Affiliation and Size Calculation

- The size of a business is determined by counting its employees (or average annual receipts) **plus** those of **all** of its affiliates.

13 CFR 121.103(a)(6)

Separate divisions, subsidiaries, locations, CAGE codes, or product lines are **irrelevant**.

- Whether a concern has any affiliates is determined by analyzing the existence of (common) **control or the power to control**.

For Instance...

- ❑ If I own 100% of each of the following:
 - an ice cream parlor in Chicago;
 - a furniture manufacturing plant in China;
 - a machine shop in Ohio; and
 - 50% of a construction company in Montreal
- ❑ I **control** all four through my ownership interest (13 CFR 121.103(c)(1)). Because I control them all, they are affiliated and must be included to calculate the size of any *one* of them.

Thus, location and line of business are irrelevant.

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Common Ownership

Common Ownership

- ❑ Majority ownership:
 - Owns 50% or more of firm's voting stock
- ❑ Minority ownership:
 - Single minority ownership: Owns less than 50% but large compared to others
 - Multiple minority ownership: Less than 50% by multiple minority owners
- ❑ Widely held ownership

13 CFR 121.103(c)

Identity of Interest

Individuals or firms with identical business or economic interests may be treated as one party with such interests aggregated.

Familial Relationship

- ❑ Family members have identical interests and treated as one party.
- ❑ Fracture exists if family members have no involvement with each other's business concern or are estranged.
- ❑ Not necessary that there be the complete absence of any business ties between the family members or their firms. SBA must consider pertinent factors in examining a clear fracture.

13 CFR 121.103(f)

Economic Dependence

- ❑ Economic dependence is established if a firm derives 70% or more of its revenue from another firm.
- ❑ OHA rejects mechanical application of 70% rule for start-ups.
- ❑ If heavy dependence in the 3 preceding years, a firm must demonstrate its economic independence as of the date of its self certification.

13 CFR 121.103(f)

Joint Venture (JV)

- ❑ Parties to a JV are considered to be affiliates.
- ❑ A joint venture is a small business concern when the combined receipts/employees of all joint venture partners and affiliates do not exceed the small business size standard.
 - 13 CFR 121.103(h)(1)&(2)

Joint Ventures

- ❑ JV cannot be awarded more than **3** contracts over **2** YR period, starting from first contract award date or will be subject to general affiliation (3-in-2 rule).
- ❑ The same two (or more) entities may create additional joint ventures but long-standing relationship might lead to affiliation finding.
- ❑ Proportional share of JV receipts are included when determining size.

13 CFR 121.103(h)

Joint Ventures

- JV may qualify as SB IF each partner is small under size standard; and
 - 1) Procurement qualifies as a bundled or consolidated requirement as defined in 13 CFR 125.2; OR
 - 2) Procurement is not bundled or consolidated requirement; and
 - a) Procurement with receipts-based size standard exceeds half the applicable size standard; or
 - b) Procurement with employee-based size standard exceeds \$10 million.

Joint Ventures

□ Ostensible subcontractor

- Prime and ostensible subcontract are joint venturers.
- A subcontractor is an ostensible subcontractor if:
 - The subcontractor performs the primary and vital requirements, or
 - The prime contractor is unusually or unduly reliant upon the subcontractor.
 - A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes.

13 CFR 121.103(h)(4)



Joint Ventures

□ Ostensible subcontractor

- In services contracts, the prime must perform the contract's primary and vital requirements, not merely manage the subcontractor's performance of these tasks.
- In construction contracts, subcontractors often perform a majority of work. Thus, the primary role of prime contractor is to superintend, manage, and schedule the work, including coordinating the work of the various subcontractors.

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Non-Manufacturer Rule

Non-Manufacturer Rule (NMR)

- ❑ Applicable to supply contracts
- ❑ On SB set-aside supply contracts, offeror must either manufacture item under 13 CFR 125.6 OR supply product of small business made in U.S.
- ❑ SBA may waive this requirement.
- ❑ Two types of a waiver: Individual and Class

13 CFR 121.406

Non-Manufacturer Rule (NMR)

Not a manufacturer? Must meet the following conditions:

- 1) Does not exceed 500 employees;
- 2) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied;
- 3) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and
- 4) Will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement.

13 CFR 121.406



8(a) Joint Ventures

8(a) Points for Joint Ventures

- ❑ For 8(a) contracts, the formal joint venture must be approved by SBA prior to award.
- ❑ For other contracts (i.e., SBSA, HUBZone set-aside), SBA does not need to approve the JV prior to award, but if the size status of the joint venture is protested, the provisions of 124.513(c) and (d) will apply.
 - 124.513(c) – joint venture content requirements
 - 124.513(d) – performance of work requirements

8(a) Points for Joint Ventures

- For JV between 8(a) protégé and SBA approved mentor:
 - MP Agreement must have been approved before 8(a) company submits its offer on a competitive procurement.
 - JV must be approved by the SBA.
 - JV is considered small so long as the 8(a) protégé is small for the procurement.
 - JV may bid as a small business on any federal prime or subcontract.

13 CFR 124.513(b)(3) & 13 CFR 121.103(h)(3)(iii)

Size Program Rules and Regulations

- ▶ 13 CFR Part 121
- ▶ SBA.gov at <http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards>
- ▶ FAR 19.1 & 19.3

Bottom Line: When in doubt, check it out with a Size Specialist!

Area Office Jurisdiction

If headquarters of protested concern is located in	Forward the protest to the SBA Area Office in
CT, ME, MA, NH, NJ, NY, RI, VT	<u>Area I – Boston</u> Janette Fasano (617) 565-5622
DE, DC, MD, PA, VA, WV	<u>Area II – King of Prussia</u> Vincent Mazzotta (610) 382-3190
AL, FL, GA, KY, MS, NC, SC, TN	<u>Area III – Atlanta</u> Ivette Bascumbe (404) 331-7587
IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI	<u>Area IV – Chicago</u> David Gordon (312) 353-7674
AR, CO, LA, NM, OK, TX	<u>Area V – Fort Worth</u> Stephanie Lewis (817) 684-5305
AK, AZ, CA, HI, ID, MT, NV, OR, UT, WA, WY	<u>Area VI – San Francisco</u> Esmeralda Sanchez (415) 744-4242

Contact Information

Amy Kim, Size Specialist

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WHAT IS BEST VALUE?

Army Contracting Command – Aberdeen Proving Ground
Danielle Moyer, Kari Schoerner
Contracting Officers
18 November 2014



BEST VALUE

- As defined in Federal Acquisition Regulation (FAR) 2.101, Best Value means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement
- FAR 15.101 states Best Value can be obtained by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary
- Best Value Continuum includes both
 - Tradeoff Process
 - Lowest Price Technically Acceptable Process



TRADEOFF PROCESS FAR 15.101-1

(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and

(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406



LPTA PROCESS FAR 15.101-2

- (a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price
- (b) When using the lowest price technically acceptable process, the following apply:
- (1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors
 - (2) Tradeoffs are not permitted
 - (3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors



SECTION M – EVALUATION FACTORS FOR AWARD

- Section M, “Evaluation Factors for Award,” or an equivalent section for a task/delivery order or commercial procurement, forms the basis for evaluating offerors’ proposals
- It helps reach a solid, supportable source selection decision
- The Source Selection Authority (SSA) is bound by Section M

What do I, as an offeror, need to know to write my proposal to determine if my solution meets, fails to meet, or exceeds the requirement?



SECTION L – INSTRUCTIONS TO OFFERORS

- Section L, “Instructions to Offerors,” or an equivalent section for a task/delivery order or commercial procurement, provides instructions on how to structure the proposal and what information is required from the offerors in order to evaluate the factors and subfactors specified in Section M
- Section L will request all of the data and only the data that will be evaluated in accordance with Section M
- Specifies volumes and parts requested, formats, number of copies, page limitations



COMMON MISCONCEPTIONS

- Best Value = Tradeoff
- LPTA is not Best Value
- LPTA is only looking for the bare minimum to fulfilling the requirement
- The LPTA process is “easier” than the tradeoff process
- LPTA means the lowest priced offeror will win
- Tradeoff means the best technical proposal will win
- Tradeoff cannot result in an award to the lowest priced offeror
- Tradeoffs result in highest priced offeror as awardee
- The definition of what is acceptable is different
- LPTA does not work with Cost Reimbursement Type Contracts



LPTA PROCESS

- When deciding to use the LPTA process, the Army must:
 - “Analyze its requirements;
 - Choose relevant non-price evaluation factors;
 - Obtain relevant information about as many of the available purchase alternatives as it can find;
 - Consider any relevant tradeoffs; and then
 - Specify threshold values...for the non-price factors that will ensure its needs will be met.” (Edwards 34)

As an offeror in an LPTA solicitation: (1) Should I propose to exceed the minimum requirements? (2) Will exceeding requirements increase my price?



BEST VALUE PROCESS SCENARIOS

-Potential LPTA Uses

- When market research reveals equally qualified providers
- When the requiring activity is not willing to pay a premium for proposed solutions exceeding the requirement
- When competing at the task/delivery order level under Multiple Award contracts/agreements where technical capability was evaluated as part of the base award

-Potential Tradeoff Uses

- When tangible, quantifiable solutions can be identified as worth paying a premium for exceeding requirements
- When market research reveals a wide variety of providers who could meet or exceed the requirements with differing solutions



RESOURCES

Edwards, Vernon. *Source Selection Answer Book Second Edition*. Virginia: Management Concepts, 2006.

Federal Acquisition Regulation. <http://farsite.hill.af.mil>

Department of Defense Source Selection Procedures.
<http://www.acq.osd.mil/dpap/policy/policyvault/USA007183-10-DPAP.pdf>

Note: DoD Source Selection Procedures are not applicable to FAR Part 16 competitions (i.e., the task or delivery order competition process)





Source Selection Procedures Evaluations and Discussions

ALC-APG — November 18, 2014

Cathleen Higgins Perry
Senior Acquisition Attorney
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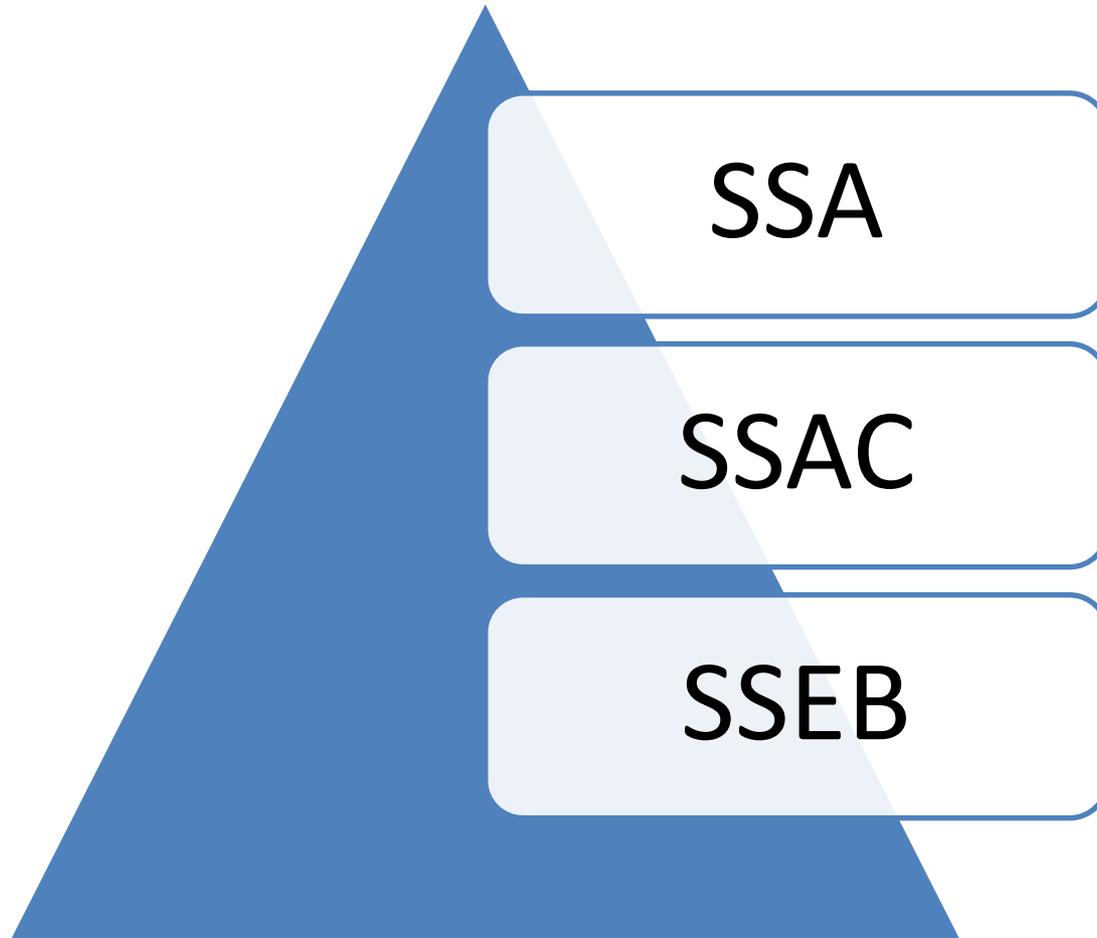
DoD Source Selection Procedures

- Outlines a common set of principles and procedures for conducting acquisitions.
- Required for all best-value, negotiated, competitive acquisitions under FAR part 15.
- Waived only with the express permission of the Director, Defense Procurement and Acquisition Policy.
- Contains distinct methodologies for evaluation of non cost factors.

<http://www.acq.osd.mil/dpap/policy/policyvault/USA007183-10-DPAP.pdf>



Submission of Proposal – What now?





SSEB – Source Selection Evaluation Board

- SSEB members receive the proposal and:
 - Conduct a comprehensive review and evaluation of the proposals against the solicitation requirements and the approved evaluation criteria.
 - Ensure the evaluations are based solely on the evaluation criteria outlined in the RFP.
 - Assist the SSEB Chairperson in documenting the SSEB evaluation results.



SSAC – Source Selection Advisory Council

- Establishment and Role of SSAC –
 - The primary role of the SSAC is to provide a written comparative analysis and recommendation to the SSA.
 - Organizations shall establish a SSAC for acquisitions with a total estimated value of \$100M or more. An SSAC is optional for acquisitions with a total estimated value of less than \$100M.
 - When a SSAC is established, it will provide oversight to the SSEB and review the evaluation results to ensure the evaluation process follows the evaluation criteria and that the ratings are appropriately and consistently applied.



SSA – Source Selection Authority

- Responsible for the proper and efficient conduct of the Source Selection process IAW the procedures and applicable laws, regulations
- Make the determination of whether to enter discussions
- Select the source whose proposal offers the best value to the Gov't
- Document the rationale in the SSDD



FAR 15.305 – Proposal Evaluation

- Subpart a of 15.305 states that –
- (a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities **solely on the factors and subfactors specified in the solicitation**. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.



Proposal Submission

Evaluation of proposals –

Evaluation against the proposal requirements.

SSEB conducts an in-depth review of each proposal against the factors and subfactors established in the solicitation, and assigns evaluation ratings.

**** Reasonable, consistent and in accordance with the RFP.



Proposal Evaluation

- **Strength** is an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.
- **Weakness** means a flaw in the proposal that increases the risk of unsuccessful contract performance. See FAR 15.001.
- **Significant Weakness** in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance. See FAR 15.001.
- **Deficiency** is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. See FAR 15.001.

*these findings are associated with trade-off evaluations



Adequately written proposal

- All proposals should be acceptable on their face
- Offerors should not rely on clarifications, communications or discussions to have an acceptable proposal.
- Omission of information required by the RFP is a deficiency rendering a proposal unacceptable, therefore unawardable.
- Agency is NOT required to engage in clarifications, communications OR discussions.



Adequately written proposal

- An offeror bears the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably where it fails to do so.
- See also - American Systems Corporation, June 23, 2014
- Iroquois Bar Corp. & Scrufari Constuction Company Joint Venture, July 1, 2014
- Where proposal submission requirements are clear, an agency is not required to assume the risks of potential disruption to its procurement in order to permit an offeror to cure a defective proposal submission initiated by its failure to comply with mandatory solicitation requirements.



GAO review of Evaluation Factors

- Clearly stated technical requirements are considered material to the needs of the government, and a quote that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. Carahsoft Tech. Corp., B-401169, B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 5.
- It is well established that a technically unacceptable proposal cannot be considered for award. Analytic Servs., Inc., B-405737, Dec. 28, 2011, 2012 CPD ¶ 16 at 13.
- A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so.



FAR 15.306 Exchanges with Offerors after Receipt of Proposals

- Clarifications – FAR 15.306(a)
- Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2.



Clarifications

- Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated;
- An agency MAY, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a)



FAR 15.306 Exchanges with Offerors after Receipt of Proposals - Communications

- Communications with offerors before establishment of the competitive range – FAR 15.306(b)
- - Used where the Agency intends to establish a competitive range and conduct discussions.
- - Shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.



Competitive Range

FAR 15.306(c)

- (c) *Competitive range.*
- (1) Agencies shall evaluate all proposals in accordance with [15.305\(a\)](#), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.



Discussions

- Discussions are highly recommended for Source Selections. The primary objective of Discussions is to maximize the Government's ability to obtain the Best Value.
- All Exchanges with Offerors will be accomplished through the release of Evaluation Notices (ENs)
 - All ENs shall clearly indicate the type of exchange being conducted (clarification, communications, etc.)
 - Any EN addressing a proposal deficiency or weakness shall clearly indicate that a deficiency/weakness exists.
- “Full and Meaningful” discussions



Discussions

- FAR 15.306
- (3) At a minimum, the contracting officer must, subject to paragraphs (d)(5) and (e) of this section and [15.307\(a\)](#), indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.



Discussions

- When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. FAR § 15.306(d)
- Nonetheless, an agency need not “spoon feed” an offeror as to each and every item that could be revised to improve an offeror’s proposal. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 15.



Discussions

- In situations where there is a dispute regarding whether communications between an agency and an offeror constituted discussions, the acid test is whether an offeror has been afforded an opportunity to revise or modify its proposal.
- Communications that do not permit an offeror to revise or modify its proposal, but request that the offeror confirm what the offeror has already committed to do in its proposal, are clarifications and not discussions.



Final Proposal Revisions

- At the conclusion of discussions, each offeror within the competitive range shall be given an opportunity to submit a Final Proposal Revision (FPR) - FAR 15.307(b)
- The SSEB will complete the evaluation, after the receipt of any FPR's.



Documentation of Final Evaluation Results

- The SSEB shall prepare documentation of the evaluation results
- The format of the report , should be a written narrative and be of sufficient detail to serve as a clear and concise record of the basis of the source selection decision.
- The report shall be included in the contract file.



Conduct and Documentation of Comparative Analysis

- SSAC, if utilized, shall review the evaluation and findings of the SSEB to ensure their accuracy, consistency, and supportability in accordance with the evaluation criteria and shall provide advice, analysis, briefings, and consultation as requested by the SSA.
 - This will culminate in a written comparative analysis of proposals and award recommendation for the SSA's consideration.
 - In the event of a significant disagreement among SSAC members regarding the recommendation, a minority opinion shall be documented and presented to the SSA as part of the Comparative analysis.



Best Value Decision

- The SSA shall select the source whose proposal offers the best value to the Government IAW the established criteria in section M of the Solicitation.
- The Best Value decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation, considering recommendations and minority opinions presented to the SSA.
- The SSA may use reports and analysis prepared by others, however, the source selection decision shall represent the SSA's independent judgment.



Source Selection Decision Document

- A Source Selection Decision Document (SSDD) shall be prepared for all formal source selections.
- Shall reflect the SSA's independent, integrated, comparative assessment and decision.
- Shall include the rationale for any business judgments/trade-offs made or relied upon by the SSA.
- Shall be included in the source selection file.



Questions?

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