

Considerations For Small Businesses Performing Federal Contracts and Subcontracts



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Josh Mullen

615-726-7318

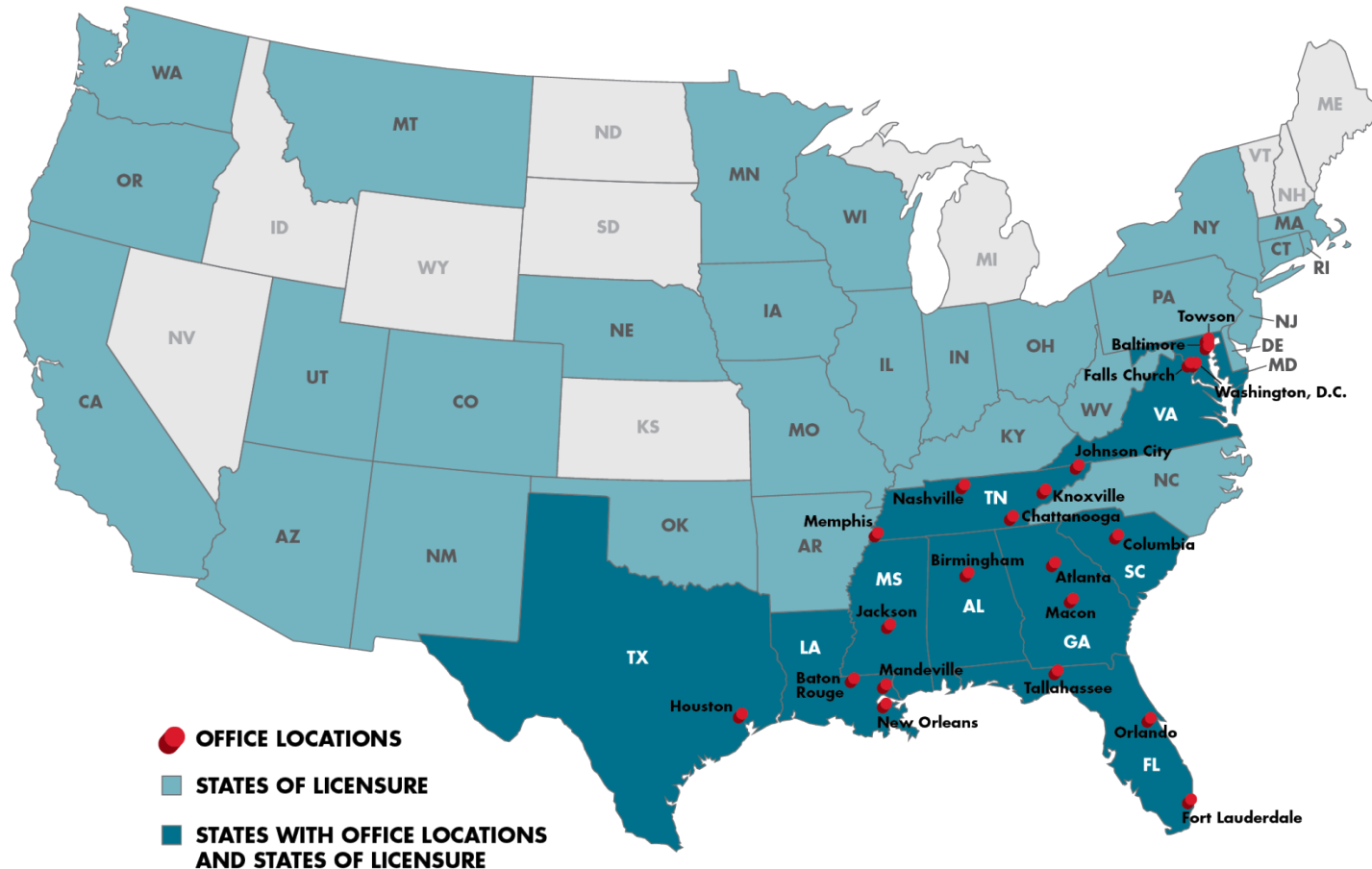
jmullen@bakerdonelson.com

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Who We Are

More than 30 lawyers advise government contractors throughout the southeastern United States, including clients with national markets



Who We Are

Josh Mullen



Shareholder at Baker Donelson, focusing in the area of Government Contracts

- Mid-South *Super Lawyers Rising Star* in the area of Government Contracts (2014-2019)
- Represent government contractors with:
 - SBA size protests, and bid protests before the GAO and state governments;
 - Compliance with FAR and agency acquisition regulations;
 - Business structure and formation issues related to SBA set-aside programs (Mentor-Protégé Program & joint ventures, small business, VOSB, SDVOSB, WOSB, SDB, etc.); and
 - Negotiation of teaming agreements, subcontracts, novation agreements, and other agreements related to government contracts.

Agenda

- **Protect your SBA size status – Know the SBA rules & avoid affiliation**
- **Manage your subcontracts**
- **Be aware of changes in the law**
- **Understand your federal contract & implement a code of conduct**

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Protect Your SBA Size Status

- **What is a Small Business?**
 - **Business Concern (13 C.F.R. § 121.105)**
 - § Business entity organized for profit,
 - § Place of business located in the United States, and
 - § Operates primarily in the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor
 - **That Meets A Particular Size Standard That Corresponds To A Six-Digit North American Industrial Classification Code (“NAICS”)** (See 13 C.F.R. §§ 121.101 & 121.201)
 - § Average number of employees for each of the pay periods for the preceding completing 12 calendar months
 - § Average annual receipts over the prior 3 or 5 fiscal years

Protect Your SBA Size Status

- **When is the size status of a small business determined?**
 - **Typically at the time when the business submits its initial offer or response that includes price (13 C.F.R. § 404(a))**
 - § SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer or response which includes price.
 - **Subcontracts (13 C.F.R. § 404(d))**
 - § A concern must qualify as small as of the date that it certifies that it is small for the subcontract.
 - § 13 C.F.R. § 121.410 – *Prime Contractor chooses* the NAICS code that it believes best describes the product or service being acquired by the subcontract
 - **Multiple Award Contracts**
 - § If small at the time of offer for the M.A.C., concern is typically small for each order issued against the contract
 - § But contracting officer can require recertification for particular orders

Employee Based Size Standard

- **Average Number of Employees For Preceding 12 Months (13 C.F.R. § 121.106)**
 - Average number of employees of the concern based on number of employees for each of the pay periods for the preceding completed 12 calendar months (including employees of domestic and foreign affiliates)
 - § Part-time and temporary employees counted the same as full-time employees
 - § If concern is in business less than 12 months, the average number of employees is used for each of the pay periods that it was in business
 - **Affiliates**
 - § Average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the concern with the average number of employees of each affiliate
 - § When affiliation starts during a 12-month period, the affiliates' employees are counted for the entire 12-month period

Receipts Based Size Standard

- **On December 17, 2018, President Trump signed into law the Small Business Runway Extension Act of 2018**
 - Increased the measurement period for calculating average annual receipts (*not* employee count) for SBA size purposes from 3 years to 5 years
 - Upon passage, different benefits or issues were raised depending on revenue
 - § Several businesses with declining revenues that were expecting to be small may be large for a longer period
 - § Several businesses expecting to grow large may remain small for longer period

Receipt Based Size Standard

- **Small Business Runway Extension Act of 2018**
 - **December 21, 2018 - SBA issued Information Notice 6000-180022 (Dec. 21, 2018)**
 - § SBA declared that until the SBA changes its regulations, businesses are required to still report their receipts based on the 3-year average
 - § But did the SBA have the power to delay the wishes of Congress and the President?
 - “It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment.” *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991).
 - **June 24, 2019 – SBA Issues Proposed Rule (RIN 3245-AH16) implementing the Small Business Runway Extension Act**
 - § SBA confirmed it would apply the 3-year average until a final rule was effective
 - § Asserted that the 3-year average period would apply to any offer (including price) submitted before the effective date of the final rule
 - If offer submitted the day before the effective date, proposed rule stated that 3-year average applied
 - § Took position that the statutory change did not change SBA’s authority

Receipt Based Size Standard

- **Final Rule – 13 C.F.R. § 121.104 – How does SBA calculate annual receipts?**
 - Effective on January 6, 2020
 - Adopted a 5-year averaging period for calculating annual revenues of firms and revenues of their affiliates for all receipt based size standards
 - Two-year transition period until January 6, 2022
 - § During this 2-year period contractors can choose either a 3-year averaging period or a 5-year averaging period
 - **Exceptions:**
 - § Business Loan and Disaster Loan programs

Receipt Based Size Standard

- **Annual receipts of a concern that has been in business for 5 or more completed fiscal years means the total receipts of the concern over its most recently completed 5 fiscal years divided by 5 (13 C.F.R. § 121.104)**
 - *But* until January 6, 2022, can choose 3 years instead of 5 years
 - § Incomplete fiscal years are annualized for businesses younger than 5 years
 - Total receipts for period in business, divided by number of weeks in business, multiplied by 52
 - Consideration of Affiliates
 - § Add the average annual receipts of the business concern with the average annual receipts of each affiliate
 - § If concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts includes the receipts of the acquired or acquiring concern
 - Aggregation applies for the entire period of measurement, not only the period after affiliation arose

Small Business Affiliation

- **13 C.F.R. § 121.103 – How does SBA determine affiliation?**
 - **General Principles**
 - § 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
 - **Control may be negative or affirmative**
 - § Negative control example - Ability to prevent a quorum or otherwise block action by the majority owner
 - **Totality of the Circumstances**
 - § Ownership, management, previous relationships with or ties to another concern, contractual relationships, etc.
 - § No single factor controls

Small Business Affiliation

- **Why does affiliation matter?**
 - SBA counts the receipts, employees, or other measure of size of the concern and all of its domestic and foreign affiliates
- **13 C.F.R. § 121.108 – What are the penalties for misrepresentation of size status?**
 - Presumption of loss based on the total amount expended
 - Deemed affirmative, willful, and intentional certifications of small business size status
 - § Submission of a bid or a proposal for a small business set-aside
 - § Registration in SAM.gov or any other Federal electronic database for the purposes of getting awards of government contracts
 - False Claims Act Liability and/or suspension or debarment

Affiliation Based on Ownership

- **Stock Ownership - 13 C.F.R. § 121.103(c)**
 - **Ownership, or has the power to control, 50% or more of the concern's stock**
 - § Easiest affiliation analysis – SBA deems 50% ownership as control
 - § “Person” referenced in the regulations includes an individual, an entity, or a business concern
 - **Ownership of less than 50%, but large compared to others**
 - § Non-rebuttable affiliation
 - § Example: Smokey, Inc. owns 40% of Vol Company, and the next largest share is 10%, Smokey, Inc. controls Vol Company
 - Smokey, Inc.'s share is large compared to all other outstanding blocks of voting stock
 - Smokey, Inc. and Vol Company are affiliated

Affiliation Based on Ownership

- **Stock Ownership - 13 C.F.R. § 121.103(c)**
 - **Rebuttable assumption of affiliation if two or more persons each owns, controls, or has the power to control less than 50% of a concerns voting stock and:**
 - § (1) **Minority holdings are all approximately equal in size; and**
 - § (2) **All of the minority holdings taken together are large compared to any other**
 - **Example**
 - § Pruitt Company, Fulmer Corporation, and Neyland, Inc. each own 25% of Smokey, Inc. and no other stockholder owns more than 5% of Smokey, Inc.
 - § Pruitt Company, Fulmer Corporation, and Neyland, Inc. are affiliated with Smokey, Inc. because they each control Smokey, Inc.
 - **Presumption is rebuttable**
 - § Can submit information to the SBA to show that control or the power to control does not exist

Affiliation Based on Ownership

- **Stock Ownership - 13 C.F.R. § 121.103(c)**
 - **Widely Held Stock**
 - § If a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in absence of evidence to the contrary
 - **Example:**
 - § CEO of large public company with widely held stock decides to build an ice cream store
 - § Ice cream store is an affiliate of the large public company because the CEO controls both

Affiliation Based on Ownership

- **Stock Options, Convertible Securities, Agreements to Merge - 13 C.F.R. § 121.103(c)**
 - **Present effect on power to control the concern**
 - § Stock options, convertible securities, and agreements to merge (including agreements in principle) have a present effect on the power to control a concern
 - § Treated as though the rights have been exercised
 - **Examples:**
 - § Smokey, Inc. has stock options to purchase 50% of the shares of Neyland, Inc. Smokey, Inc. controls Neyland, Inc. and the entities are affiliated.
 - § The President of Smokey, Inc. and the President of Fulmer Company have met several times to discuss the possibility of a merger of the two companies, but they have no formal or informal agreement as they are just talking about the possibilities. Not yet given present effect because no agreement in principle.

Common Management Affiliation

- **Affiliation Based on Common Management - 13 C.F.R. § 121.103(e)**
 - Affiliation arises where one or more officers, directors, managing members, or partners who control the board of directors and/or management of one concern also control the board of directors or management of one or more other concerns.
 - Example
 - § Two members on the three-member board of Football Deflators, Inc. decide to start a separate company named Capture Plays, Inc. to take surreptitious videos of football practices for a profit
 - § Football Deflators, Inc. and Capture Plays, Inc. are affiliated because the controlling members of the board of Football Deflators, Inc. control Capture Plays, Inc.

Identity of Interest Affiliation

- **13 C.F.R. § 121.103(f) – Rebuttable presumption of affiliation when two or more persons have identical or substantially identical business or economic interests**
 - **Family members**
 - § Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other
 - § Must show a “clear line of fracture” to rebut this presumption
 - **Investors with various common investments**
 - **Factors that lead to Identity of Interest affiliation:**
 - § Shared resources and employees
 - § Loans from one to the other
 - § Shared locations
 - § Shared equipment

Identity of Interest Affiliation

- **13 C.F.R. § 121.103(f) – Rebuttable presumption of affiliation when two or more persons have identical or substantially identical business or economic interests**
 - **Economic Dependence**
 - § SBA may presume an identity of interest based on economic dependence if the concern in question derived 70% or more of its receipts from another concern over the previous three fiscal years
 - § Evaluated for the three-year period prior to when the offeror submitted its initial offer including price
 - **Rebuttable**
 - § Can rebut this presumption by showing that despite the relationship and revenues, the concern at issue is not solely dependent on the other concern

Newly Organized Concern Rule

- **13 C.F.R. § 121.103(g) – Newly Organized Concern Rule**
 - **A new concern is affiliated with an existing concern if:**
 - § The officers, directors, principal stockholders, managing members, or key employees of existing concern organize a new concern in the same or related industry or field of operation;
 - § Those same officers, directors, principal stockholders, managing members, or key employees serve in a similar role for the new concern; and
 - § The existing concern will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities.
 - **Rebuttable only by showing a “clear line of fracture”**

Franchise/License Agreements

- **13 C.F.R. § 121.103(i) – Affiliation based on franchise and license agreements**
 - Typically no affiliation if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership
 - Restraints relating to standardized quality, advertising, accounting format and other similar provisions generally will not be considered in determining whether affiliation exists
 - Affiliation may arise through the other discussed factors, especially if there are excessive restrictions on the sale of the franchise interest.

Exception for Indian Tribes, ANCs, NHOs, CDCs

- **13 C.F.R. § 121.103(b) – Exceptions to Affiliation Coverage**
 - Concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities.
 - Business concerns owned and controlled by Indian Tribes, ANCs, NHOs, CDCs, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management.

Joint Venture Affiliation

- **13 C.F.R. § 121.103(h) – Affiliation Based on Joint Ventures**
 - Association of individuals and/or concerns consorting to engage in and carry out a business venture for a joint profit
 - The parties to a joint venture that submits an offer for a particular procurement or property sale are affiliated for the performance of that particular contract, unless an exception applies
 - **Exceptions:**
 - § No affiliation if each of the joint venture parties is small under the size standard corresponding to the NAICS Code assigned to the contract
 - § No joint venture affiliation between a mentor and a protégé who have entered into a mentor protégé agreement that has been approved by the SBA if the joint venture meets the applicable requirements (13 C.F.R. § 125.8, § 125.18, etc.)
 - JV is small so long as the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement

Mentor-Protégé Exception

- **History & background**

- **Before October 1, 2016**

- SBA's mentor-protégé program was available only to 8(a) certified contractors
 - Not available to any other SBA small business Contractor
 - All 8(a) joint venture agreements required direct approval from SBA
 - Some other non-SBA agency mentor-protégé programs

- **After October 1, 2016**

- July 25, 2016 final rule launched “All Small” program on October 1, 2016
 - Expanded mentor-protégé program from only 8(a) small businesses to all small businesses, including WOSB, SDVOSB, & HUBZone small businesses
 - Expanded opportunities for the mentor-protégé exception to affiliation

Mentor-Protégé Exception

- **13 C.F.R. § 125.9 – All Small Mentor-Protégé Program**
 - Designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve protégé firms’ ability to compete for federal contracts
 - Various types of assistance can be provided:
 - § Technical and/or management assistance
 - § Financial assistance (loans from mentor; mentor equity investment up to a 40% interest in protégé)
 - § Subcontracts – going either way
 - Biggest benefit – Exception to SBA’s affiliation rules
 - § Affiliation may not be found solely on the mentor-protégé agreement or assistance provided under that agreement (13 C.F.R. §§ 125.9(d)(4) & 121.103(b)(6))
 - § Please request All-Small Mentor-Protégé program presentation

Mentor-Protégé Exception

- **November 8, 2019 Proposed Rule (84 FR 60846)**
 - Would merge the 8(a) business development Mentor-Protégé program into the All-Small Mentor-Protégé Program
 - Proposes to eliminate the requirement for 8(a) joint venture to submit the joint venture agreement to the SBA for approval prior to contract award
 - Proposes various other changes to the 8(a) business development program
 - Clarifies that administrative personnel can be hired by the JV, including Facility Clearance Officers
 - § Resolves the issue of unpopulated JV's obtaining security clearance
- **Notable comments**
 - SBA is considering whether to limit mentors only to those firms having average annual revenues of less than \$100 million

General Affiliation for Joint Venture under 3-in-2 Rule

- **The 3-in-2 rule (13 C.F.R. § 121.103(h))**
 - SBA believes that a joint venture is not an ongoing business entity
 - *Specific joint venture entity* generally may not be awarded more than three contracts over a two year period, starting from the date of award of the first contract
 - Once a joint venture receives one contract, SBA will determine compliance with the three awards in two years rule for future awards as of the date of initial offer including price
 - **A violation?**
 - Award 1 – December 7, 2016
 - Award 2 – December 25, 2016
 - Offer for Award 3 – January 1, 2017
 - Offer for Award 4 – January 10, 2017
 - Award 3 – October 31, 2017
 - Award 4 – December 25, 2017

General Affiliation for Joint Venture under 3-in-2 Rule

- **The 3-in-2 rule (13 C.F.R. § 121.103(h))**

- **No violation**

- May be awarded more than three contracts without the SBA finding general affiliation if the initial offer including price for the fourth (or fifth, etc.) contract occurred during the two-year period, and the offer was made before the third contract was awarded

- Award 1 – December 7, 2016
- Award 2 – December 25, 2016

- Award 3 – October 31, 2017
- Award 4 – December 25, 2017

- Offer for Award 3 – January 1, 2017
- Offer for Award 4 – January 10, 2017

Both offers made within two years of first award, and before award of third contract

- **Easiest compliance method – create a new joint venture entity**

- 13 C.F.R. § 121.103 – “a specific joint venture entity” may not be awarded more than 3 contracts over a 2 year period
- Same two entities may create additional joint ventures, and each new joint venture entity may be awarded up to three contracts

General Affiliation for Joint Venture under 3-in-2 Rule

- **November 8, 2019 Proposed Rule (84 FR 60846)**
 - SBA proposes to eliminate the “3” in the “3-in-2 Rule”
 - § Specific joint venture entity may not be awarded contracts beyond a two-year period, starting from the date of the award of the first contract
 - § Once a joint venture receives a contract, it may submit additional offers for a period of two years from the date of that first award
 - § SBA will find general affiliation if the joint venture submits an additional offer after two years from the date of the first award
 - Key compliance strategies
 - § Monitor and limit all offers within the two-year period after the first award
 - § Create additional joint venture entities
 - Proposed rule confirms that the SBA approves of this compliance method

Manage Your Subcontractors - Ostensible Subcontractor Affiliation

- **13 C.F.R. § 121.103(h)(4)** - “A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes.”
 - Affiliation specific to a particular contract
- **Elements of ostensible subcontractor affiliation**
 - A subcontractor that is not “Similarly Situated;” **AND**
 - § Subcontractor with same small business program status (i.e., WOSB, SDVOSB, etc.) and also small for the NAICS Code size standard.
 - Performs primary and vital requirements of a contract or an order, **OR**
 - Upon which the prime contractor is unusually reliant

Manage Your Subcontractors - Ostensible Subcontractor Affiliation

- **Factors Reviewed By SBA**

- Proposed subcontractor is the incumbent contractor and is ineligible to compete for the award (i.e., grown large)
 - § Biggest risk factor
- Prime contractor plans to hire the large majority of its workforce from the subcontractor
- Prime contractor's proposed management previously served with the subcontractor on the incumbent contract
- Prime contractor lacks relevant experience or technical expertise and must rely upon its more experienced subcontractor to win the contract

- **Fact intensive inquiry**

- Subcontract relationship with potential risk factors should include language to address these factors

Manage Your Subcontractors

- **Definitions**

- FAR 19.701 / FAR 44.101 - any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

§ It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

- **Key Considerations for Subcontracts**

- Prime contractor is the only party with a government contract
- Subcontractor has no “privity of contract” with the government
- Prime contractor is responsible for all of its subcontractors
- FAR 9.604 – No agreement can limit the government’s rights to hold the prime contractor fully responsible for contract performance

Negotiating Key Subcontract Terms

- **FAR and Agency Supplement Flow-Down Clauses**
 - Failure to include proper-flow down clauses can lead to a default by the prime contractor
 - § **Mandatory** – the relevant clause has language requiring the prime contractor to include the clause in the subcontract
 - § **Discretionary** – the government does not require the clause to be included in the subcontract, but prime contractor can include it
 - Do not copy and paste every prime contract clause into subcontract
 - § Rote insertion of FAR clauses causes contradiction and confusion
 - § Flow down the substance of some clauses instead of their exact terms

Negotiating Key Subcontract Terms

- **FAR and Agency Supplement Flow-Down Clauses**
 - Avoid self-deleting clauses
 - Existing forms are fine if application of particular FAR provisions are clear
 - § Dollar threshold
 - These clauses apply to any purchase order between us above \$150,000
 - § Do not use the same forms for commercial items and non-commercial items
 - Include an order of precedence clause
 - Include language tailoring the FAR clauses to ensure they make sense
 - § Certain proprietary information and government property should not go to prime contractor

Negotiating Key Subcontract Terms

- **Changes Clause (FAR 52.243-1 through FAR 52.243-5)**
 - Government can unilaterally change the prime contract and the prime contractor must perform in accordance with the change
 - Prime contractor needs ability to require the subcontractor to be subject to the government's change
 - Not a mandatory, but very important
- **Termination for Convenience (FAR 52.249-1 through FAR 52.249-5)**
 - Government can unilaterally terminate the prime contract for convenience
 - Prime contractor needs a similar right to terminate the subcontract if the prime contract is terminated
 - Not a mandatory flow-down clause, but very important

Negotiating Key Subcontract Terms

- **Intellectual Property Clauses**
 - Issue of growing significance and negotiation
 - Prime contractor needs to ensure that it has what it needs to perform
 - Subcontractor needs to ensure that the prime contractor does not get more than it is entitled to receive (See FAR 27.304-3)
- **Disputes & Default Clause**
 - Should confirm how disputes will be resolved consistent with the prime contract requirements
 - Only the prime contractor can file claims with the Government
- **Clear Statement of Work & Workshare**

Negotiating Key Subcontract Terms

- **Confidentiality Clauses**
 - Need to protect confidential information
 - But carve-out provisions for FAR 52.203-19 – *Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements*
- **Develop an invoice and payment requirements consistent with Government's schedule**
 - Paid-if-Paid provision?
- **Labor Requirements & Affirmative Action**
- **Require subcontractor to comply with your code of conduct**

Be Aware of Changes in the Rules

- **“Ban-the-Box” Fair Chance Act implemented in FY 2020 NDAA**
 - Prohibits federal contractors and government agencies from asking applicants about their criminal histories until after a conditional job offer is made
 - Conditional offer = an offer of employment that is conditioned on the results of a criminal history inquiry
 - Exceptions:
 - § Does not apply where criminal background checks are otherwise required by law;
 - § Does not apply to employment related to classified information or sensitive national security or law enforcement duties
 - § Does not apply to certain positions that the Office of Personnel Management will identify in regulations
 - Becomes effective on December 20, 2021

Be Aware of Changes in the Rules

- **HUBZone Final Rule (84 FR 65222) – Effective Dec. 26, 2019**
 - First comprehensive change to the HUBZone program in 20 years
 - § Changes recertification requirements from 3 years to every year
 - But eliminates requirement to demonstrate HUBZone eligibility at the time of each offer and award
 - Establishes a minimum threshold of 20% for the “attempt to maintain” HUBZone residency requirement
 - § Concern with less than 20% of its employees residing in the HUBZone during performance has not attempted to maintain its 35% residency requirement
 - Changes requirement to continue to live in the HUBZone if the employee (1) Lives in the HUBZone at time of certification; (2) Stays at that residence for at least 180 days after certification; and (3) Continuously works for the HUBZone concern
 - Several other changes included in the Final Rule

Be Aware of Changes in the Rules

- **Proposed Rule for WOSB / EDWOSB Certification**
 - FY 2015 NDAA requires WOSB concern to be certified by –
 - § Federal agency;
 - § State government;
 - § SBA Administrator; or
 - § National certifying entity approved by the SBA Administrator
 - *But* – SBA has failed to enact rules to implement the Law
 - § March 2016 – SBA launched <https://certify.sba.gov> and again confirmed that WOSB and EDWOSB self-certification was fine
 - Contrary to the Law?

Be Aware of Changes in the Rules

- **Proposed Rule on WOSB / EDWOSB Certification issued on May 14, 2019 (RIN 3245-AG75, 84 Fed. Reg. 21256)**
 - Would eliminate self-certification for WOSBs / EDWOSBs
 - Certification would occur through the SBA (continuing to use <https://certify.sba.gov>), certain other government agencies, or a non-government third party certifier
 - Third Party Certifier Requirements
 - § May charge a fee, but must expressly inform that SBA will certify for free
 - § Must enter into an agreement with SBA, and will be subject to SBA review
 - Certified WOSB / EDWOSB must recertify every three years
 - If application is denied, cannot apply again for at least 1 year
 - **Likely will create a significant bottleneck of 10,000 firms applying at the same time**

Implement a Code of Conduct & a Reporting Mechanism

- **FAR 52.203-13 – Contractor Code of Business Ethics and Conduct**
 - \$5.5 Million; Performance Period of 120 Days
- **FAR 3.1002 - Policy**
 - Contractors must conduct themselves with the highest degree of integrity and honesty.
 - Contractors should have a written code of business ethics and conduct.
 - To promote compliance, should have *an employee business ethics and compliance training program* and *an internal control system* that— (1) Is Suitable to the Size of the Company; (2) Facilitates Timely Discovery and Disclosure of Improper Conduct; and (3) Ensures Corrective Measures Are Promptly Instituted and Carried Out.

Questions

Josh Mullen

615-726-7318

jmullen@bakerdonelson.com

