Small Business Update
SAME Omaha Post _2011Industry Day

HUBERT J. CARTER JR
Deputy For Small Business
U.S. Army Corps of Engineers
Omaha District
20110503
SMALL BUSINESS IS A-TEAM ACTIVITY

GET IN THE GAME!

Anticipate  Innovate  Collaborate  Communicate
Program Delivery Team
Omaha District Mission
Small Business Updates
Team Arrangements
Affiliations
Networking Opportunities
“An investment in knowledge pays the best interest.”
Col. Robert J. Ruch became the Commander of the Omaha District, U.S. Army Corps of Engineers, September 3, 2009. As Commander, Ruch oversees federal civil works activities in the upper Missouri River basin, engineering design and construction for the Army and Air Force in eight Mountain and Upper Midwest states, and environmental remediation work throughout the United States. A major focus of the civil works mission is the operation of the six, giant, multi-purpose dams and reservoirs on the main stem of the Missouri River and the flood pools of 21 tributary dams. The main stem dams and their impoundments comprise the largest Corps-managed reservoir system in the United States.
Ted H. Streckfuss is the Omaha District Deputy for Project Management and the Chief Program and Project Management Division for the Omaha U.S. Army Corps of Engineers (USACE). Ted is directly responsible for execution of all programs execution of all program and project management within the District. Responsibilities include support to 26 Army and Air Force installations in an eight-state area, water resources development in nine states of the Upper Missouri River Basin, and Hazardous, Toxic and Radioactive Waste cleanup work for the Department of Defense and other clients. Ted was born and raised in the Webster/Aberdeen areas of northeast, South Dakota. Ted holds a Bachelor of Science degree in civil engineering from South Dakota State University; and a Master of Science degree in environmental engineering. Ted and wife, Diana, have three sons, Lucas (26) Nathanael (25) And Benjamin (22). Ted enjoys woodworking, hunting, billiards, and volunteer activities at his Church.
John Jacobson is the Chief of the Contracting Division for the Omaha District, U.S. Army Corps of Engineers (USACE). John is directly responsible for all contract execution and administration within the Omaha District. Responsibilities include contract support to 26 Army and Air Force installations in an eight-state area. The Omaha District is the most expansive district in USACE. Its boundaries cover more than 700,000 square miles. Prior to coming to Omaha, John served as the Commander of the 55th Contracting Squadron, Offutt Air Force Base, Nebraska. This squadron was the largest Contracting Squadron in Air Combat Command with 100 personnel under his command. As the Commander, he directed the award and administration of a contract portfolio valued at over $12 billion.
Position Title: Deputy for Small Business
Series: 1102  Procurement Analyst
Deputy Appointment:  17 March 1998
Education:  BS Public Administration
Level III Certified Acquisition Professional
Years of Federal Services:  35 years
Date Assigned USACE:  April 1994
Place of Birth:  N. L. R., Arkansas
Status: Blessed, Married, Father, Public Servant
Strengths:  Can-Do Will Do Attitude; Generous; Loyal; Selfless Service; Resiliency
Weaknesses:  Never Quit; Never Give Up
DEPUTY FOR SMALL BUSINESS

- Ensure the Project Delivery Team (PDT) execute SB Programs and Nation’s small business objectives
- Facilitate Training for PDT(s) and Stakeholders
- Optimize business opportunities for members of the Small Business Community
- Aggressively identify suitable requirements for the small business program
Initial focus: Navigation, flood control (now known as flood risk management)

Built 6 hydropower projects to manage the Missouri River – 1944 Flood Control Act

WWII - built facilities for National Defense

Since the ‘80’s – environmental restoration leads to clean up efforts of giant proportion
OMAHA DISTRICT’S MISSIONS

- Protective Design MCX
- Transportation MCX
- USACE Rapid Response
- Interior Design CX
- Hydrant Fuels CX
- MMRP Design Center
- Religious Facilities Center of Standardization (COS)
- Access Control Points COS
- Regulatory Program in 6 states
- Real Estate Services in 10 states

MILCON ($541 M)
- 18 Active Installations
- 3 Readiness Centers
- > 400 Projects

CIVIL WORKS ($204 M)
- Flood Protection, Navigation, Hydropower, Recreation, Regulatory, Ecosystem Restoration, Flood Control and Coastal Emergencies (FCCE)

ER ($165 M)
- > 550 Projects

Special Projects ($177 M)

Military boundary
Civil Works boundary

- 700,000 square miles
- Nearly 60 locations
- 27 Dams (including 6 hydropower main stems)
- 247 miles River Navigation
- 284 Recreation Areas
- 99 miles Missouri National Recreation River
- 6,627 miles of Shoreline
- 4,910 Regulatory Permit Applications
- 53 Federally-recognized Tribal Nations
- Protected Cultural Sites
- 9-year Drought
- > 1,200 projects
Mission-Focused Execution: Resource decision based on what is best for our missions and our Stakeholders (Customer, Consumer and Constituents)

Facilitating smart use of resources, technical competency and innovation with focus on mission execution.
“Genius without education is like silver in the mine.”

“Courteous Reader: Remember that time is money.”
Department of Defense (DOD) Contracting Officers will publish a notification consistent with the requirements of FAR 10.001(c) (2) on FedBizOpps.gov, or any successor site, at least 30 days prior to the release of a solicitation for a bundled acquisition. In addition, if the DOD agency has determined that measurably substantial benefits as the result of bundling, the notification must include a brief description of those benefits.
Require agency to include in each solicitation above the substantial bundling threshold ($8M) a provision to solicit bids or proposal by teams and joint ventures of small business concerns.

Ensure decisions regarding consolidation of contract requirements are made with a view to providing small businesses with appropriate opportunities to participate as prime contractors and subcontractors in the agency's procurements.
Prohibits an agency head from carrying out an acquisition strategy that includes a consolidation of contract requirements unless the senior procurement executive or chief acquisition officer:
DOD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 811 of the National Defense Authorization Act for Fiscal Year 2010. This FAR change encourages agencies to maximize the effective use of competition by making certain that the proper Justification and Approval (J&A) is obtained prior to award of 8(a) sole-source contracts over $20 million, as required by section 811.
DOD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 1347 of the "Small Business Jobs Act of 2010." Section 1347 clarifies the contracting officer's ability to use discretion when determining whether an acquisition will be restricted to small businesses participating in the 8(a), HUBZone, or service-disabled veteran-owned small business (SDVOSB) programs. There is no order of priority among small businesses in the 8(a) Business Development Program, the HUBZone Program, or the SDVOSB Program.
Department of Defense (DoD), General Service Administration, and National Aeronautics and Space Administration (NASA) have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement section 826, Market Research, of the National Defense Authorization Act for Fiscal Year 2008. Section 826 requires the head of an agency to take appropriate steps to ensure that any prime contractor of a contract (or task order or delivery order) in an amount in excess of $5 million for the procurement of items other than commercial items engages in market research as necessary before making purchases.
The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 35 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 54, Professional, Scientific and Technical Services and one industry in NAICS Sector 81, Other Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated 45 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine size standards of industries grouped by an NAICS Sector. SBA has issued a White Paper entitled.
Size Standards Methodology" and published in the October 21, 2009 issue of the Federal Register a notice that ``Size Standards Methodology" is available on its Web site at http://www.sba.gov/size for public review and comments. The ``Size Standards Methodology" White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.
DOD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. This law aligns with the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which directed agencies to save $40 billion in contracting annually by Fiscal Year (FY) 2011 and to reduce the use of high-risk contracts. This rule provides regulatory guidance on the proper use and management of other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour
The Section 8(a) program is a nine-year business development program, which provides specialized business training, counseling, marketing and technical assistance to small businesses certified for participation in the program.

Recent regulation changes will permit Section 8(a) Participant called to active military to suspend 8(a) status to avoid lost of program term (9 years).

Economic disadvantaged status determination is now based on personal income of $250K for initial eligibility, $350K for continued eligibility and total assets of $4 million for initial eligibility, $6 million continued eligibility.
An immediate family member of a current or former Section 8(a) Participant may enter into the Section 8(a) program when (i) there are no or negligible connections between the two and (ii) the family member can demonstrate sufficient management and technical experience to independently operate the company.

Section 8(a) Participant in a Mentor-Protégé agreement must perform 40% of the business arrangement.
A Section 8(a) Participant of an SBA approved joint venture award cannot subcontract work to a non-8(a) joint venture partner, including its “Other than Small” Mentor.

Section 8(a) Participant of an approved SBA joint venture award will report to SBA how work and subcontracting limitation requirements were achieve.

Section 8(a) firms owned by Tribes, Alaskan Native Corporations (ANC), Native Hawaiian Organizations (NHO) and Community Development Corporations (CDC) to report benefits flowing back to their respective communities.
Reform rules mandate firms owned by a Tribe, ANC, NHO or CDC may not receive a sole source Section 8(a) contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by another participant (or former participant) owned by the same tribe/ANC/NHO/CDC.
SBA is now authorized to early graduate a firm that exceeds the size standard for its primary NAICS code, as adjusted, for three successive program years.

SBA’s Inspector General can now request a formal size determination.
The Small Business Act authorizes contracting officers to specifically limit, or set aside, certain requirements for competition solely amongst women-owned small businesses (WOSBs) or economically disadvantaged women-owned small businesses (EDWOSBs) provided...
The contracting officer has a reasonable expectation that two or more WOSBs will submit offers.

The anticipated award price of the contract does not exceed $5 million in the case of manufacturing contracts and $3 million in the case of all other contracts. In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.
The NAICS code assigned to the solicitation, invitation for bid, or quote is in an industry in which SBA has designated that WOSBs are underrepresented.

The contracting officer has a reasonable expectation that two or more EDWOSBs will submit offers.

The anticipated award price of the business arrangement does not exceed $5 million in the case of manufacturing contracts and $3 million in the case of all other business arrangements.

The business arrangement may be awarded at a fair and reasonable price.
SMALL BUSINESS IS A-TEAM ACTIVITY

GET IN THE GAME!

Anticipate  Innovate  Collaborate  Communicate

BUILDING STRONG®
TEAM ARRANGEMENTS

- Two or more companies form a partnership or joint venture to act as a potential prime contractor

- 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

REFERENCE: FAR 9.601
BENEFITS OF TEAMS

- Reduce the Administrative Burden
- Single Point of Contact
- Reduce Program and Contract Management
- Support Development of the Small Business Community
- Increase Competition and Expand Opportunities
- Increase Innovation
PARTNERSHIP

- Two or more individuals or concerns who come together to co-own a trade or business for profit
- No distinction between the business and the owners
- Partnership (members) shared profits and risks
- The partnership (members) in privity of contract with the government
- Privity: A relation between parties held to be sufficiently on behalf of or against another party with whom this relation exists

Reference: DOD Guidebook for Facilitating Teams
JOINT-VENTURE

- 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")

- Combining efforts, property, money, skill, or knowledge

- But not on a continuing or permanent basis for conducting business generally

Reference: 13 CFR §121.103(h)
JOINT-VENTURE

- Represents the formation of a new company
- May be a small business, Section 8(a), a HUBZone or SDV joint venture
- Must be listed in CCR
- Consists of small businesses only (Exception of SBA Mentor-Protégé for Section 8(a) Participants)
- Assist small businesses compete on larger contracts
An agreement to work together to pursue a prime contract with the promise to work together in good faith if successful

Prime is responsible; owns profits and risk

Prime in privity of contract with government

Privity: A relation between parties held to be sufficiently on behalf of or against another party with whom this relation exists

Reference: 13 CFR § 121.103 (h)
“Never confuse motion with action.”

“Glass, china, and reputation, are easily cracked, and never well mended.”
The size of a business is determined by counting its employees (or average annual receipts) plus those of all of its affiliates.

Size is not separately determined for separate divisions, subsidiaries, locations, or product lines.

Separate incorporation, payment of taxes, or “existence” is irrelevant.

The key to determining the size of a business is affiliation and the key to it is control.
What Is the Deal

- Revenues or employees are combined to determine size status.

- A small business and its affiliates may be determined to be “Other than Small.”

- You may be determined ineligible to respond to small business set-asides.

Reference: 13 CFR §121.103 and 13 CFR 121.103(h)(2)
AFFILIATION FACTORS

- Others have power to control your business
- Common managers
- Identical business Interests
- Common stockholders
- Ownership of multiple businesses are owned
- Contractual relationships exist
- Joint venture arrangements exist --

Others have the ability to control your business
For instance...

- If I own 100% of each of the following:
  - an ice cream parlor in Chicago and
  - a furniture manufacturing plant in Tibet and
  - a machine shop in Omaha and
  - a construction company in Montreal...

- Because I own and control all of them they are all affiliated and all of them must be added together to determine the size of any one of them.

- Location and line of business are absolutely, completely, totally irrelevant.
Each and every one of these businesses qualifies as a small business under the 1500 employee size standard. Any one of these businesses could be the prime or participate in a JV as a small business. (Change at Company B)
None of the businesses in this diagram are eligible for a JV or can submit an offer for a small business procurements. Why not? Because each of these businesses is Other than Small. Why? Because each one of these businesses, when combined with its affiliates, exceeds 1500 employees (our hypothetical standard).
A Section 8(a) Participant that meets a procurement’s size standard could enter into an SBA-approved mentor/protégé agreement with an Other Than Small mentor. The Mentor and Protégé can then form a JV—if approved by SBA—and then be eligible for award of a small business set-aside procurement or a Section 8(a) procurement.
The “relaxed rule” means that so long as each JV partner *individually* qualifies as a small business, then the JV arrangement qualifies as small.

In other words, an “Other than Small” concern may not be a member of a joint venture (exception is the Section 8(a) Mentor Protégé Participants).
“All mankind is divided into three classes: those that are immovable, those that are movable, and those that move.”
A contractor and subcontractor will be treated as if they were joint ventures if the subcontractor will be performing the **primary and vital requirements** of the contract or if the prime contractor is **unusually reliant** upon the subcontractor.

In making that determination, SBA will consider a wide variety of factors including such things as contract management, technical responsibilities, and percentage of work subcontracted.
1. Who will manage the contract?
2. Which party possesses the requisite background and expertise to carry out the contract?
3. Who “chased” the contract?
4. What degree of collaboration was there on the proposal?
5. Are there discrete tasks to be performed or is there a commingling of personnel and materials?
6. What is the relative amount of work to be performed by each?
7. Which party performs the most complex and costly contract functions

The seven factors analysis is useful, is not exclusive, conclusion is based on finding of unusual reliance rises to the level of a joint venture upon examination of the entire record and a reasonable evaluation of the circumstances (Office of Hearing and Appeal – SBA)
If a Section 8(a) JV is formed, the Section 8(a) participant must perform a “significant” portion of the contract.

If an Section 8(a) JV is formed, the 8(a) must receive at least 51% of the profits of the JV.

Section 8(a) firms should consult their Business Opportunity Specialist at their local SBA office.

Reference: 13 CFR §124.520
SBA must have approved the Mentor-Protégé agreement.
SBA must have approved the Joint Venture agreement.
Competes only for 8(a) procurements.
At least one firm is 8(a) certified and less than one half the size standard corresponding to the NAICS code assigned to the contract.
8(a) firm must manage and furnish project manager and earn 51% of profits.
See other special requirements in CFR requirements regarding 8(a) qualifications to joint venture.

References: 13 CFR §124.513
This slide applies to Section 8(a), HUBZone, and SDV set-asides too.

JV consists of small firms only.

Affiliation exceptions for large procurements. Limitations on subcontracting, ostensible subcontractor scrutiny, and subcontracting limitations apply.
You can subcontract only so much. All small business set-asides are subject to subcontracting limitations.

The joint venture is subject to the limitations.

Not applicable in unrestricted competition.

Affiliation again: “ostensible subcontracting”

References: FAR Par 19.508(e) and FAR Part 19.811-3(e)
FAR Clause: 52.219-14 – Limitations on Subcontract
HUBZONE SET-ASIDE

- JV consists of HubZone concerns only.
- Limitations on subcontracting apply.
- 51% of the cost of personnel must be performed by HUBZone

References: 13 CFR §126.70
FAR Clause: 52.219-3_Notice of Total HUBZone Set-Aside
SERVICE-DISABLED VETERAN SET-ASIDE

- SDVOB is managing partner.
- SDV receiving 51% of profits.

Reference: FAR Clause 52.219-27_Notice of Total Service Disabled Veteran-Owned Small Business Set-Aside
<table>
<thead>
<tr>
<th>Services</th>
<th>Supplies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide 50% of personnel costs</td>
<td>Provide 50% of cost of manufacturing, excluding materials</td>
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<thead>
<tr>
<th>General Construction</th>
<th>Special Trade Construction</th>
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</thead>
<tbody>
<tr>
<td>Perform 15% of cost of contract with own employees, excluding materials</td>
<td>Perform 25% of cost of contract with own employees, excluding materials</td>
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</tbody>
</table>
The NAICS code assigned to a prime contract may not be applicable to a particular subcontractor’s work. Therefore, SBA regulations provide that a company is small for subcontracts “if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or service being acquired by the subcontract.”

Reference: 13§121.410
<table>
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<th>Activity</th>
<th>Location</th>
<th>Sponsor</th>
<th>Date</th>
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<tr>
<td>S</td>
<td>Omaha District Small Business Week</td>
<td>Omaha District Zorinsky Federal</td>
<td>Omaha District Outreach PDT</td>
<td>2-6 May 2011</td>
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<td>S</td>
<td>SAME Industry Day Omaha, Nebraska</td>
<td>Embassy Suites Downtown-Omaha</td>
<td>Omaha District SAME – Omaha Post</td>
<td>3-4 May 2011</td>
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<td>S</td>
<td>DOD SB Training Conference</td>
<td>Sheraton New Orleans Hotel New Orleans, La</td>
<td>Department of Defense Office of Small Business Programs</td>
<td>16-19 May 2011</td>
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<td>S</td>
<td>National Veteran Conference <a href="mailto:info@nationalveteransconference.com">info@nationalveteransconference.com</a></td>
<td>Ernest N. Morial Convention Center New Orleans, LA</td>
<td>Department of Veteran Affairs</td>
<td>15-18 Aug 2011</td>
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**M: Monthly   S: Scheduled**
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<td>M</td>
<td>SAME General Membership Meeting</td>
<td>TBA</td>
<td>SAME – Omaha Post</td>
<td>2nd Thursday 1130-1300</td>
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<td>M</td>
<td>Federal Executive Association</td>
<td>Omaha Press Club</td>
<td>Omaha-Lincoln Federal Agencies</td>
<td>2nd Thursday 1130-1300</td>
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<td>M</td>
<td>Small Business</td>
<td>Regency Lodge Omaha, NE</td>
<td>SBA and Local Federal Agency</td>
<td>2nd Friday 0700-8300</td>
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<td>Empowerment Breakfast</td>
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<td>M</td>
<td>Veteran Business Owner Forum</td>
<td>Regency Lodge Omaha Nebraska</td>
<td>PTAC - Nebraska Business Development Center</td>
<td>1st Friday 0800-0900</td>
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<td>Breakfast</td>
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<td>M</td>
<td>Winning Federal Contract Workshop</td>
<td>SBA Nebraska District Office</td>
<td>SBA, City of Omaha, PTAC, Offutt AFB, Omaha District</td>
<td>3rd Thursday 0730-0900</td>
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