

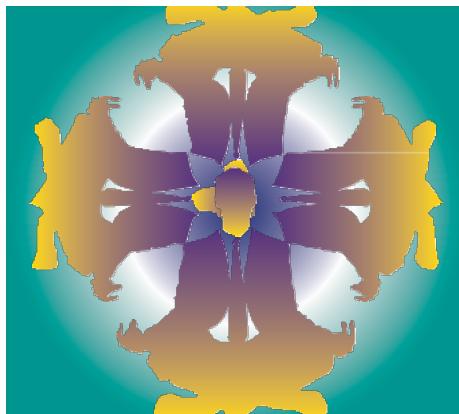


By Pamela Mazza and Kathryn Flood

Small Business Teaming Partnerships— Knowing Program Requirements Essential to Teaming Relationship Zen

The past year has created many changes within the small business contracting programs overseen by the Small Business Administration (SBA). With the creation of the Women-Owned Small Business (WOSB) program, there are now more subcategories of small business contracting programs than ever, and thus, more opportunities available for teaming arrangements. However, both large and small business must be mindful of the changes within the programs and ensure that both the small business and the teaming venture are compliant with all applicable regulations. Each program maintains its own set of requirements for both prime contractors and subcontractors—what works for the 8(a) Business Development program, for example, does not translate for Service-Disabled Veteran-Owned Small Business (SDVOSB) concerns. The key factors for most programs are ownership, control, and an examination of the day-to-day management of operations for the individual on which the program designation is based. However, these definitions may be different across the programs. Furthermore, new SBA regulations adopted to implement the Small Business Jobs Act of 2010 (P.L. 111-240) create stricter penalties surrounding misrepresentation of small business status, whether intentional or not. There has never been a time where strict regulatory compliance has been more important.

While the majority of the small business contracting program requirements falls on the participating small businesses themselves, all contractors entering into teaming agreements with participant small businesses must have a working knowledge of the program requirements as well. As noted above, the nuances of the requirements and definitions among the various programs do not always run parallel, making compliance sometimes difficult to



understand and implement. For example, when examining the managerial control of a business, the SBA will consider the size of a concern and any quorums that might be established to exert control over the functions of the company, although a quorum in and of itself is not enough to hinder control. However, the Center for Veterans Enterprise (CVE), which certifies Veteran-Owned Small Business (VOSB) and SDVOSB concerns for the Department of Veterans Affairs (VA), routinely holds the opposite, denying VOSB and SDVOSB concerns certification for this very reason. If a business was certified as a VOSB or SDVOSB, even as little as two years ago, the examination process under the CVE has completely changed. CVE certification is a prerequisite for VOSBs and SDVOSBs that would like to contract with the VA, although SBA has instituted different requirements for its administration of the SDVOSB program. SDVOSBs are still able to self-certify for participation in non-VA SDVOSB set-asides. Another example is acceptable rights that may vest in minority owners of an 8(a) Business Development concern by SBA versus the strict limitation on such rights as applied by the CVE for VOSB and SDVOSB concerns.

When teaming with HUBZone small businesses, another issue teaming partners must navigate is the disarray surrounding HUBZone eligibility. Due to the expiration of many redesignated districts as a result of the 2010 Census publication, many HUBZone small business concerns were forced to exit the program as of October 1, 2011. SBA has estimated that this has affected up to 40 percent of all previously registered HUBZone program participants. It is therefore crucial when considering a teaming arrangement with any HUBZone program participant for HUBZone opportunities that the teaming partner independently verify the eligibility of the HUBZone concern through SBA's website.

Additionally, since the WOSB program is new, naturally there will be a settling-in period with regard to the interpretation of its regulations and what does and does not constitute adequate ownership and control by the woman owner within the program.

What do these changes mean for the contractor who enters into a teaming arrangement with a small business program participant? It means that both parties to the teaming arrangement must perform adequate due diligence prior to entering into any arrangement. Both sides must understand the nuances of the rules and regulations relating to the subject program's eligibility requirements and both sides must know that the small business and teaming venture meets all program requirements to be successful. If either party to such an arrangement feels uncomfortable disclosing the level of information necessary to allay the concerns of its partner, it should seek guidance from a knowledgeable independent accountant or attorney who can confidentially verify the participant's compliance.