



The Surety & Fidelity  
Association of America  
Serving the Industry Since 1908

## **Creating and Enforcing Reasonable Small Business Participation Rules**

### **Small Contractors vs. Contract Bundling**

The Small Business Reauthorization Act of 1997 defines contract bundling as “consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concerns.” In essence, because these large contracts run longer and encompass a greater scope, they reduce the number and frequency of opportunities for small businesses to bid and be awarded federal work.

Changes were made in the federal procurement process in the 1990s to make it quicker, less complex and more efficient in light of the overall reductions in federal acquisition work force. To achieve the economies of scale and to address lack of resources in federal contracting agencies to oversee contracts awarded, the federal government began awarding larger contracts. By the late 1990s, the impacts of these changes were clearly seen in the small business community. Awarding only large contracts virtually ensures that small contractors will not be able to obtain these contracts since they do not have the capacity and capital necessary to complete the contract, and therefore, will not be able to provide the required bonds.

### **Small Contractor vs. Federal Agency Set Asides**

All federal agencies have a goal that requires 23% of the total dollars awarded in government contracts to be given to small businesses. This ambitious goal combined with a stretched procurement workforce within the federal government leads to project opportunities that are set aside for small businesses, but are quite large. Contracting agencies argue that they do not have a sufficient number of contracting officers to manage a higher number of low-dollar projects. The high dollar value of some federal government construction projects make them impossible for a small contractor to undertake. (SFAA staff is aware of instances of small business construction project opportunities valued in excess of \$50 million.) Qualified small contractors that are “small” in accordance with the applicable regulations (up to \$33.5 million in revenues under the standard of the Small Business Administration (SBA)) can get bonding at some level, and could perform some of the work, but cannot obtain bonds at a high enough level to bid the project. There is a disconnect between the size of projects that are advertised to meet small business goals and the size of construction projects that the small contractor is qualified to perform.

## **Small Contractors vs. Road Blocks in Current Federal Regulations**

Mentor/protégé programs and joint ventures with larger contractors could provide a means for small contractors to participate in public construction projects. The current regulations, however, lack clarity and standardization among the procuring agencies as to what arrangements are acceptable. In addition, the regulations present disincentives to participate in a joint venture with a larger contractor. For example, a small business could lose its qualification as a small business if it participates in a joint venture in which the joint venture partner does not qualify as a small business. Once an otherwise qualified small business loses its status, the small contractor cannot take advantage of the set-aside opportunity and the federal agency letting the construction contract faces an obstacle in meeting its small business participation goal.

## **What is Needed Now**

It is time to restore some needed balance between two laudable goals of the federal government, namely, efficiency in procurement and involvement of small businesses in procurement. The federal agencies cannot afford to go back to the labor intensive system of the past nor can the agencies continue to pursue operational efficiencies at the expense of small businesses.

Small contractors that participate in joint venture and mentor/protégé programs should not lose their status as a qualified small business. The federal procurement rules need to be changed to permit small contractors to participate in federal work to the extent that they can and to permit federal agencies letting construction contracts to count the work that the small contractor self-performs towards their small participation goal. The regulations explicitly should permit open joint ventures between the small contractor and a larger contractor in any construction contracts of \$50 million or less. In any such joint venture between a small and large contractor, the small business should be required to self-perform at least 10% of the work in jobs between \$25--\$50 million and 15% of the work in jobs under \$25 million. Federal agencies letting construction contracts on this basis should be permitted to count some multiple of the small contractor's work (2 to 3 times the amount of work self-performed) towards their small participation goal.

The federal procurement rules also must contain mandates and incentives so that construction contracts are broken into smaller parts so that the truly small and emerging contractors in the industry--not participating in joint venture or mentoring programs—can participate in federal construction projects. The federal rules should require any federal agency letting construction contracts to let 5% of its total procurement budget in contracts of no more than \$5 million. These contracts would be part of the agency's federal small participation goals. Any contract under \$5 million in excess of this 5% requirement should be credited as \$5 million towards the agency's small participation goal, regardless of the actual dollar amount of the contract.

The challenge for this Congress is to strike the right balance among operational efficiency, opportunity and fairness.