

# *Small Business Regulatory Changes and Strategies for Growth*

## **Susan Moser, CPA**

Partner, Cherry Bekaert LLP

(703) 584-0224

[smoser@cbh.com](mailto:smoser@cbh.com)

## **Kristen Kwiatkowski**

Manager, Cherry Bekaert LLP

(703) 584-0267

[kkwiatkowski@cbh.com](mailto:kkwiatkowski@cbh.com)



# *Your Speakers for Today*

## **Susan Moser | Partner | Cherry Bekaert LLP**

- ▶ Founder of the Firm's Government Contractor Services Group and Managing Partner of the Firm's Washington, D.C. practice, Susan provides a unique insight into the needs and perspective of her clients. She assists government contractors & technology clients with a wide array of accounting and consulting services, including strategic assessment plans, business process reviews, regulatory guidance, proposal pricing and cost strategies. Prior to joining Cherry Bekaert, Susan served as the CFO of a federal contractor with international operations, and a controller for one of the Hampton Roads area's largest government contractors, after starting her career as an auditor with a national accounting firm.

## **Kristen Kwiatkowski | Manager | Cherry Bekaert LLP**

- ▶ As a Manager with Cherry Bekaert's Government Contractor Services group, Kristen focuses on advisory services to government contractors. She concentrates on providing contract consulting services to federal contractors, including accounting system compliance, compliance consultation, incurred cost submissions and audit support. Before joining Cherry Bekaert, Kristen worked as a Senior Auditor with the Defense Contract Audit Agency (DCAA) and focused on high risk audits, forward pricing rate proposals, cost proposals, and pre- and post-award accounting system assessments.

# Achieving Success When Selling to the World's Largest Buyer Requires Rigorous Compliance

- ▶ Collaborative approach to assisting Clients with Growth & Compliance
- ▶ Full Lifecycle Support
- ▶ Depth of knowledge of the Government Contracting Industry enhanced by working with 200+ government contractors



# *Cherry Bekaert*

## *Government Contractor Services Group*

- ▶ Areas of expertise are not only in compliance and regulatory matters but in:
  - Contract Support (proposal pricing and cost strategies, equitable adjustments, litigation support, contract closeouts)
  - Audit Support
    - DCAA, DCMA, GAO, GSA, and DoL
    - Accounting and Billing Systems, FAR Cost Allowability, FAR Overhead Rates, CAS
  - Incurred Cost Submissions
  - Accounting and Business Operations evaluations
  - Policies and Procedures

# *Agenda*

- ▶ Regulatory Changes to Small Business Program
- ▶ Significant Compliance Requirements
- ▶ Approaches for Strategic Growth

# *Recent Small Business Program Changes*

- ▶ Revised regulations to 8(a) Program March 14, 2011
  - Determination of Economic Disadvantage
  - Ownership Requirements
  - Control Requirements
  - 8(a) Joint Venture Changes
  - Excessive Withdrawals
  - Compliance Changes
    - Economic Disadvantage Monitoring (FMVA)
    - Limitation on Subcontracting

# *Recent Small Business Program Changes*

- ▶ In February 2012, SBA revised size standards for first time in 25 years.
- ▶ Remaining a small business has become a more *popular* strategy than in the past!

# *Proposed SBA Changes*

- ▶ On December 29, 2014, the Small Business Administration (SBA) published new proposed rules under the 2013 National Defense Authorization Act (NDAA).
  
- ▶ Five key areas include:
  - Limitation on Subcontracting and Small Business Subcontracting Plans
  - Identity of Interest, Size Protests, NAICS Appeals, and Certificates of Competency
  - Calculation of Annual Receipts, Recertification Requirements, and Service-Disabled Veteran-Owned and HUBZone Small Business Concerns
  - Affiliation Rules, Joint Ventures, and the SBIR and STTR Programs
  - Changes to the Nonmanufacturer Rule

# *Limitations on Subcontracting*

- ▶ The current limitation on subcontracting rule, or "50% rule," requires small business prime contractors on set-aside services contracts to incur no less than 50% of the cost of performance for labor.
- ▶ To implement requirements of the 2013 NDAA, the SBA proposes to alter the rule.
- ▶ No more than 50% of the amount paid by the government to the prime may be paid to firms, at any tier, that are not similarly situated.
- ▶ A similarly situated entity, is a subcontractor with the same small business program status as the prime contractor.

# *Subcontracting Plan Reporting*

- ▶ Reporting Fraudulent Activity or Bad Faith
- ▶ Strengthening Corrective Action Plans
- ▶ Data Collection and Reporting

# *Size Protests*

- ▶ The proposed rule would redefine the parties that have standing to file a size protest.
- ▶ Refines the language to allow any offeror that the CO has not eliminated from consideration to bring a size protest.

# *Calculation of Annual Receipts*

- ▶ The proposed rule seeks to amend the requirements for calculating annual receipts when determining the size of a business.
- ▶ The revision to the rule is to clarify that the current definition did not require the inclusion of passive income.
- ▶ The calculation is not changing, but SBA is obtaining precision on how to calculate annual receipts.

# Recertification

- ▶ Small business concerns are currently required to recertify their size within 30 days following a merger or acquisition.
- ▶ Proposed amendment adds language that requires small business concerns subject to a merger or acquisition that occurs after an offer has been submitted but before award, to recertify their size with the contracting officer prior to award.

# *Joint Ventures & SDVO/HUBZone*

- ▶ Proposed changes to the SDVO program clarify that a joint venture of one SDVO and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement, or be awarded a sole source SDVO contract, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement.
- ▶ A SDVO small business can form a joint venture with another non-SDVO small business to submit an offer as a joint venture, and the joint venture still will qualify as an SDVO small business, provided that all members of the joint venture meet the size standard for the procurement.

# *Safe Harbor for Size Misrepresentation*

- ▶ Contractors may rely on third parties to help establish size standards. Risk for contractors is that the third parties may have flawed opinions.
- ▶ Proposed new rule establishes a safe harbor for contractors found liable of fraud penalties for misrepresenting their size status if those contractors "acted in good faith reliance upon small business status opinions received from Small Business Development Centers (SBDCs) or Procurement Technical Assistance Centers (PTACs)."

# *Ownership Requirements*

- ▶ Recent decision from the United States Court of Federal Claims shines some light on ownership determinations.
- ▶ *Precise Systems, Inc. v. United States* recently issued a bid protest opinion regarding the ownership requirements for a service-disabled veteran-owned (SDVO) small business with an employee stock ownership plan (ESOP).
- ▶ In the case of a concern which is a corporation, at least 51% of the aggregate of all stock outstanding and at least 51% of each class of voting stock outstanding must be unconditionally owned by one or more service-disabled veterans.

# *SEC. 1344 Updated Size Standards*

- ▶ The Administrator shall--
  - During the 18-month period beginning on the date of enactment of this Act, and during every 18-month period thereafter, conduct a detailed review of not less than 1/3 of the size standards for small business which shall include holding not less than 2 public forums located in different geographic regions of the United States;
  - After completing each review, make appropriate adjustments to the size standards
  
- ▶ The Administrator shall ensure that each size standard for small business concerns is reviewed not less frequently than once every 5 years.

# *Socio-Economic Program Parity (FAR 19.203)*

- ▶ There is no order of precedence among the following:
  - 8(a) Program (subpart 19.8)
  - HUBZone Program (subpart 19.13)
  - Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14)
  - Women-Owned Small Business (WOSB) Program (subpart 19.15).

# *Socio-Economic Program Parity (FAR 19.203)*

- ▶ The contracting officer shall first consider an acquisition for the 8(a), HUBZone, SDVOSB, or WOSB programs before using a small business set-aside (see 19.502-2(b)).
  
- ▶ In determining which socioeconomic program to use for an acquisition, the contracting officer should consider, at a minimum-
  - Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency's requirement; and
  - Agency progress in fulfilling its small business goals.

# *Growth Strategies and Considerations for Small Businesses*

# *Planning for Graduation*

- ▶ Do not develop an unreasonable reliance on 8(a) awards
- ▶ Maximize efforts during participation in 8(a) program to obtain work outside of the 8(a) program.
- ▶ Build relationships within the marketplace through use of mentor-protégé program, joint ventures, targeting specific companies to subcontract work under your prime contracts, opportunities for you to subcontract, etc.
- ▶ Diversify work flow to include work outside of primary NAICS code

# *Growth Strategies and Considerations*

**Stay small!**

# *Growth Strategies and Considerations*

- ▶ Pay attention to size standards for all work
- ▶ Think about the impact of subs on your revenue size. Is it increasing qualifications, or just revenue?
- ▶ Recertification rules and timing
- ▶ Sole Source vs. Competitive Set Aside
- ▶ Acquiring contract vehicles

# *Growth Strategies and Considerations*

- ▶ Being a sub vs. being a prime
- ▶ Joint Venture
- ▶ Teaming Arrangements
- ▶ Saying “NO” sometimes if you aren’t adding value

Thank you for your participation!

For questions, follow up, or more information, please contact us:

**Susan Moser, CPA**

Partner, Cherry Bekaert LLP

(703) 584-0224

[smoser@cbh.com](mailto:smoser@cbh.com)

**Kristen Kwiatkowski**

Manager, Cherry Bekaert LLP

(703) 584-0267

[kkwiatkowski@cbh.com](mailto:kkwiatkowski@cbh.com)