

[DRAFT]

L.## GUIDANCE FOR PROSPECTIVE OFFERORS – IMPACT OF TEAMING ARRANGEMENTS ON SMALL BUSINESS STATUS

- (a) This procurement has been set aside for small business. In order to ensure that award is made to an eligible small business, prospective Offerors, in consultation with legal counsel, are encouraged to review the Small Business Administration's (SBA) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 C.F.R. § 121). In particular, Offerors proposing a joint venture, subcontracting, or another form of teaming arrangement should review 13 C.F.R. § 121.103, *What is affiliation?*, prior to submitting a proposal.
- (b) The SBA is the sole authority for making determinations of small business status for small business programs. Such determinations are binding on the Offeror and on the contracting officer. Accordingly, a finding by the SBA of affiliation between an Offeror and its proposed team member(s) or subcontractor(s) may result in the Offeror being found to be other than a small business and therefore ineligible for contract award.
- (c) Business concerns are considered to be affiliates of each other if either one directly or indirectly controls or has the power to control the other, or if another concern controls both. In determining whether affiliation exists, factors such as common ownership, common management, and contractual relationships are considered. An Offeror will also be found to be affiliated with its subcontractor(s) if the Offeror is unusually reliant upon its subcontractors or if the subcontractor(s) will perform primary and vital requirements of a contract.
- (d) The SBA has issued extensive decisions concerning its evaluation of affiliation of an Offeror and its proposed subcontractor(s). The following examples set forth characteristics that the SBA has reviewed in considering the question of affiliation and may assist prospective Offerors in developing any teaming arrangements and their proposals.
  - (1) Proposed subcontracting, partnership, joint venture, or other teaming arrangements should contain discrete descriptions of the tasks or work to be performed by each party. The Offeror or, if the Offeror is a joint venture or partnership, the joint venture participants or partners, should perform the primary or vital portions of the Statement of Work. Teaming arrangements should clearly set forth the relationship between the parties, as well as the individual roles and responsibilities assigned.

- (2) There should be a clear separation of facilities, employees, and management (decision-making authority) between the Offeror and any entities with which it has teaming arrangements.
- (3) The Offeror should directly employ at least the senior Key Person (Program Manager, Project Manager, etc.).
- (4) If the Offeror is an eligible small business prime contractor, the majority of the technical expertise should reside with the Offeror. If the Offeror is an eligible joint venture (see 13 CFR 121.103(f)(3)), the majority of the technical expertise should reside among the joint venture members.
- (5) Proposed arrangements should not have provisions that propose proportional sharing of the Offeror's profits.
- (6) In reviewing affiliation between the Offeror and its proposed subcontractors or entities with which the Offeror has a teaming arrangement, SBA has also considered the previous contractual or business relationships between the Offeror and that entity.