

Small Business Participation for CTS

Notice to Industry

Since the release of the draft Request for Proposal (RFP), the Government has revised how Small Business participates in the CTS competition and subsequent competition of Delivery Orders. This attachment to Part II of Industry Questions and Answers (Q&A) provides supplemental information on the Government's intended changes to the RFP. Please note that this information is subject to change and the final RFP will supersede any information contained within this document or the Part II Q&As.

Small Business Reserve, Joint Ventures and Size Determination

The Government intends to reserve up to three awards for the base ID/IQ contract to responsible small businesses. Small businesses may elect to create a Joint Venture (JV) in order to compete for the CTS contract. A JV, for size determination purposes, is an association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A JV is viewed as a business entity in determining power to control its management. In accordance with FAR 19.101(7)(1)(B)(2), "relaxed" affiliation rules apply to the CTS acquisition. This means the applicable size standard applied to this requirement is to individual concerns, not to the combined assets, of the JV. Therefore, small business concerns can create teams that, combined, exceed the 750 employee number for the CTS NAICS as long as each individual affiliate can meet the 750 employee size standard. *Offerors should review the joint venture regulations at 13 CFR 121.103(h) dated February 11, 2011 before entering into and creating a JV and prior to submitting a proposal.*

Offerors who are small business concerns that decide to create a joint venture must meet the following criteria to be considered a small business under this acquisition.

Ostensible Subcontracting

Careful attention must be exercised with a small business JV with regards to ostensible subcontracting. An ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime JV. For example, if a small business JV is arranged that subcontracts to a large business for a primary or vital portion of the requirement such that the large business may control the activities of the JV, then the large business could be considered an affiliate of the JV, disqualifying it as a small business.

Joint Venture Agreements and Registration in Central Contractor Registry (CCR)

All joint ventures (large and small) shall provide joint venture agreements with their proposal delineating how the JV is structured. Small business JVs shall show certification of each affiliate

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as a small business concern under the CTS NAICS. The JV must be registered in CCR as its own, unique entity.

Other Factors Effecting Small Business Concerns

Inapplicability of the Nonmanufacturer Rule

In the draft RFP, Contact clauses 52.219-28 Post-Award Small Business Program Representation APR/2009 paragraph (d) and 52.204-8 Annual Representations and Certifications OCT/2010 paragraphs (a)(3) apply what is called the nonmanufacturer rule. In accordance with FAR 19.001, the “Nonmanufacturer rule means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern.” The nonmanufacturer rule, as delineated in FAR 19.102(f), further states a concern submitting a bid or offer in its own name that proposes to furnish an end product it did not manufacture (a “nonmanufacturer”), is a small business if it has no more than 500 employees. The term “nonmanufacturer” includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition.

A critical function of the CTS acquisition will be to supply large scale communications and transmission solutions or a “system of systems”. These systems are comprised of commercial, modified commercial, and/or military specification (MILSPEC) miscellaneous parts and components. Typically, these miscellaneous parts and components are predominately manufactured by large businesses. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product.

The Government has determined that the nonmanufacturer rule does not apply to this acquisition for the following reasons. First, the acquisition is not a small business set-aside or 8(a) procurement. Further, the end product, defined within the CTS PWS, is the communication and transmission system, not just a collection of individual parts. The Government is not interested in buying just parts and components. Its end-product is a fully integrated, interoperable, functioning communication system that meets the mission requirements. Each prime contractor, including small business contractors, will be providing a system and thus will be considered to be a “manufacturer” of the system.

Inapplicability of the Limitations on Subcontracting Contract Clause

The Government is reserving up to three awards of the ID/IQ contract specifically for responsible small business concerns. Since this is not a small business set-aside or a partial set-aside or 8(a) award, the contract clause FAR 52.219-14 Limitations on Subcontracting does not apply. This clause, if used, imposes a limitation on small business concerns to subcontract. The clause states for supplies, the concern shall perform work for at least 50 percent of the cost of

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manufacturing the supplies, not including the cost of materials. This limitation ensures small businesses do not act as a simple pass-through for large businesses. As previously stated, ostensible subcontracting shall be taken into consideration by the Government to determine affiliation between offerors for the prime contract and their major subcontractors, ensuring small business concerns are not acting as a simple pass-through for a large business. Although the draft RFP did not specifically incorporate this clause, it did include language similar to this clause in sections A and H. As noted below, this language is now removed from the RFP.

Small Business Participation as a Factor for Award of Delivery Orders

The Government will use the Small Business Participation Factor in the competition for delivery order awards.

Changes to the Draft RFP

The RFP will be changed to remove some language affecting small business concerns. The following is a list of some of the more pertinent changes.

1. Pgs 2-3, under paragraph 2, the sentence “In order to be considered in the small business award reserve, small business concerns (including joint ventures) must either perform at least 51% of the work themselves or subcontract to another small business concern so that no more than 49% of the total work performed is by a large business(es)” is deleted.
2. Pg 3, paragraph 6 that starts with “The Contracting Officer shall monitor...” is deleted in its entirety.
3. Pg 33, paragraph H-12 titled “Task Order Restricted Competition” is deleted in its entirety.