



# Getting Realistic About Small Business Participation Goals

By Lenore Marema

All federal agencies have a goal that requires 23 percent of the total dollars awarded in government contracts to be given to small businesses. This ambitious goal combined with a stretched procurement work force within the federal government has resulted in project opportunities that are set aside for small businesses that 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. Yet, the high-dollar value of some federal government construction projects makes them impossible for a small contractor to undertake. Small contractors 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.

## JOINT VENTURES

Mentor-protégé programs and joint ventures with larger contractors could provide a means for small contractors to participate in public construction projects. The current federal regulations lack clarity and standardization among the procuring agencies as to what arrangements are acceptable and present disincentives to participate in a joint venture with a larger contractor. For example, a small business loses 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 set-aside opportunities, and the federal agency letting the construction contract cannot count the work of the small business in such an arrangement toward its small business participation goals.

## CHANGE NEEDED ON FEDERAL REGULATIONS

The federal regulations need to be changed to permit small businesses to participate where they can. 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 percent of the work in jobs between \$25 million and \$50 million and 15 percent 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 (two to three times the amount of work self-performed) toward their small participation goal.

## RULES MUST CONTAIN MANDATES AND INCENTIVES

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 percent 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 percent requirement should be credited as \$5 million toward the agency's small participation goal, regardless of the actual dollar amount of the contract.

These simple changes in the federal procurement rules are a win for all stakeholders in the construction process. Small businesses, who get disqualified from doing any work under the current rules, could do the parts of federal construction projects for which they are qualified. The 23 percent federal goal of small business participation in federal contract awards remains unchanged as the goal. Yet, federal agencies letting construction contracts are given reasonable methods to comply with their goals that will increase participation of genuinely small and emerging contractors. This approach recognizes the limited resources of federal agency contracting staff. Finally, it maintains the underwriting integrity and purpose of the Miller Act to provide bonds only to those contractors the surety has determined, in its opinion, to be qualified to perform the project. ■



## ABOUT the AUTHOR

Lenore Marema is vice president of government affairs for The Surety & Fidelity Association of America (SFAA) in Washington, D.C. She can be reached at 202.778.3637 or e-mail [lmarema@surety.org](mailto:lmarema@surety.org).