TOP SHEET*

Limitations on Teaming Arrangements in Small Business Set-Asides

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The United States government sets aside approximately 23 percent of all procurement dollars spent annually, that is, some $100 billion last year alone, for the procurement of goods and services from small businesses. About 15 percent of that amount is designated for federal construction contracts set aside for small business prime contractors. Such money comes with a number of strings attached. Any contractor seeking to compete for small business set-asides must understand the Small Business Administration (SBA) rules and regulations, which are contained in Title 13 of the Code of Federal Regulations. The SBA regulations and rules are complicated and can be confusing, especially when applied to teaming arrangements between two or more contractors competing for small business set-asides.

Many small business concerns (SBCs) are not capable of performing a significant percentage of the procurements set aside for small businesses by themselves. Similarly, many larger business concerns acting alone are ineligible to compete for small business set-asides because of their size. These realities make it desirable for small business contractors to team with other SBCs or with large business concerns to enable the small business contractor to successfully compete for and perform small business set-aside contracts. The SBA regulations and the Federal Acquisition Regulation (FAR) provide small business contractors several teaming arrangement vehicles to use to team up with large and small businesses alike.[1] The most common teaming arrangements are joint venture agreements and teaming agreements.

The use of these teaming arrangements, however, presents significant potential risks for contractors. Teaming arrangements can violate the SBA affiliation rules, which the SBA uses to analyze the relationships between a concern competing for a small business set-aside and its affiliated concerns to determine if the competing concern conforms to the procurement's applicable size requirements. Even the appearance of an affiliatory teaming arrangement can force contractors to dedicate significant time, effort, and resources to prove that they meet the small business size standard for a particular procurement. As such, SBCs must be familiar with the nuanced limitations on the use of teaming arrangements.

This article addresses the SBA regulations and FAR provisions that govern this unique and potentially confusing area of the law. It provides practical guidance for contractors preparing to compete for a small business set-aside through the use of teaming arrangements.

SBA Size Standards and Affiliation Rules

The SBA regulations establish small business size standards by industry based on a particular industry's North American Industry Classification System (NAICS) code.[2] Each NAICS code addressed in the SBA regulations is assigned a designated size standard based on (1) a concern's average annual receipts (total income or gross income), or (2) a concern's number of employees.[3] The designated SBA size standards for small business set-asides based on average annual receipts range from $750,000 to $33.5 million depending on the industry or NAICS code at issue, and the designated SBA size standards based on number of employees range from 100 to 1,500 employees depending on the NAICS code at issue.[4] Concerns that do not meet the size standard of the applicable procurement are ineligible to compete for, or receive, the contract award.

Understandably, many SBCs do not have the bonding capacity to bond a $33.5 million procurement, or even a $14 million procurement, without assistance from a larger, more experienced contractor. Therefore, it is common

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for SBCs to team up with other large contractors that are capable of providing the craft labor, equipment, financing, and technical capabilities required to perform the contract. When forming these teaming arrangements, however, SBCs must ensure that the very act of entering into a teaming arrangement with one or more contractors does not cause the SBC to exceed the size standard of the procurement under the SBA's affiliation rules.

SBA determinations of the size of an SBC with regard to its eligibility to compete for a small business set-aside contract award, known as "size determinations," are made by considering the size of the SBC competing for the small business set-aside in combination with any of the SBC's affiliates. Often the affiliation of a SBC with another concern is enough for the SBA to find that the SBC is a "large" rather than a "small" business concern for the purposes of a particular set-aside. An SBC that otherwise satisfies the size standard of a particular small business set-aside on its own, whether based on average annual receipts or number of employees, will become ineligible to compete for the set-aside contract award if the aggregated size of the SBC and its affiliates exceeds the size standard of the procurement.

An SBC must evaluate potential affilitory relationships before deciding to compete for a set-aside.

The SBA affiliation rules are found primarily at 13 C.F.R. § 121.103. The SBA considers concerns to be affiliates of one another if, either directly or indirectly, "one controls or has the power to control the other, or a third party or parties controls or has the power to control both."[5] Generally, a person or entity that owns or has the power to control 50 percent or more of a concern, or controls the management of the concern, is deemed to be in "control" of the concern for affiliation purposes.[6] It does not matter if control is actually exercised as long as the power to control exists.[7]

When making affiliation determinations, the SBA considers all appropriate factors, including common ownership or management; identical or substantially identical business and economic interests; past relationships between the concerns, such as previous teaming arrangements or prime/subcontractor relationships; whether the SBC is "unusually reliant" on a potential affiliate as an "ostensible subcontractor;" and the concerns' status as joint venturers.[8] The SBA's affiliation inquiry calls for a "totality of the circumstances" analysis of all facts and circumstances that may indicate the existence of an affiliatory relationship, and the SBA may find that an affiliation exists even though no single factor is sufficient to constitute affiliation on its own.[9] In other words, affiliation can arise where business or personal ties, combinations, or relationships lead the SBA to "a reasonable conclusion" that businesses are affiliated.[10]

A finding of affiliation requires the SBA to aggregate the average annual receipts or number of employees of an SBC with those of all of its affiliated concerns to determine if the SBC satisfies the size standard of the small business set-asides for which it competes.[11] Generally, the finding of an affiliatory relationship between an SBC and any other concerns ends that SBC's ability to compete for a small business set-aside, because the aggregated average annual receipts or number of employees of the SBC will be increased by those of its affiliates, likely causing the SBC to exceed the size standard of the procurement. Therefore, an SBC must evaluate any potential affiliatory relationships that it has with other concerns before deciding to compete for a set-aside. In the event a potential affiliatory relationship is found, the SBC must take steps to terminate or mitigate that relationship before the SBC's size is challenged by another offeror or by the procuring agency during the competition for a small business set-aside.

Joint Ventures and Teaming Arrangements—Which to Use and When

Teaming arrangements are a valuable tool for contractors to use to pool resources, management abilities, and technical knowledge to better compete for federal contract awards. If not done properly, however, the use of teaming arrangements can lead to adverse consequences for SBCs with regards to their ability to satisfy the size standards of small business set-asides.

Subpart 9.6 of the FAR recognizes two distinct forms of "teaming arrangements" that may be used by concerns competing for federal contract awards: (1) a teaming arrangement based on a joint venture; and (2) a teaming arrangement based on a teaming agreement.[12] The FAR recognizes that teaming arrangements are beneficial to both potential offerors and to the government because teaming arrangements allow contractors to "[c]omplement each other's unique capabilities" and "[o]ffer the Government the best combination of performance, cost, and delivery for the system or product being acquired."[13] As a result of the mutual benefits that teaming arrangements provide the government and contractors, the FAR requires procuring agencies to "recognize the integrity and validity of contractor team arrangements" as long as those arrangements are disclosed to the agency via the contract proposal.[14]

The FAR defines a joint venture as a situation in which "[t]wo or more companies form a partnership or joint venture to act as a potential prime contractor" on a federal procurement.[15] Joint ventures are generally considered to be independent legal entities separate and distinct from the entities that form them. Joint ventures have the ability to compete for and receive federal contract awards as prime contractors, to subcontract work to other contractors, and to receive work as subcontractors on federal contracts.

The FAR defines a teaming agreement as a situation in which "a potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program."[16] Teaming agreements are essentially contracts between a potential prime contractor and one or more potential subcontractors in which the prime contractor agrees to subcontract a designated portion of the contract work to its potential subcontractor should it receive the prime contract award. Teaming agreements are extremely flexible tools for prime contractors and subcontractors to use to form binding cooperative relationships to compete for federal contracts.

When to Use Joint Venture Agreements

Joint ventures should only be used by SBCs in limited circumstances and with extreme caution when competing for small business set-asides because the SBA regulations limit the number of procurements that a joint venture may compete for and the regulations presume that the members of a joint venture are affiliated for size determination purposes. The SBA regulations limit a joint venture's ability to compete for small business set-asides by prohibiting a joint venture from "submitting more than three offers over a two-year period, starting from the date of the submission of the first offer."[17] This restriction prevents joint ventures from competing for every small business set-aside for which they may be eligible. It requires joint ventures to strategically target and compete for only the contracts that they believe that they can realistically receive. Such restraint is not easy in an economy where the number of offerors or bidders on any given procurement has increased from four or five a few years ago to 15 or more in today's market.

Affiliation is a significant concern for joint venture teaming arrangements because "concerns submitting offers on a particular procurement or property sale as joint venturers *are affiliated with each other* with regard to the performance of that contract."[18] SBCs should only enter joint venture relationships with other SBCs, and only when the aggregated average annual receipts or number of employees of all members of the joint venture will not exceed the size standard of the small business set-asides for which the joint venture plans to compete. Joint ventures between an SBC and a large business concern, by definition, disqualify the joint venture from competing for small business set-asides with size standards below the average annual receipts or number of employees of the large concern because the

2010-2011 Nominating Committee Appointed

The Section's Nominating Committee is now accepting nominations and expressions of interest for leadership positions for 2010-2011. The open positions are:

Secretary
Second Section Delegate (term expiring August 2013)
Four Council members (terms expiring August 2013)

If you've been **active in the Section** over the years by frequently attending Council meetings and educational programs, if you've been the chair, cochair, or vice-chair of one or more committees and/or if you've been a contributor to the Section's journal or newsletter, please consider submitting your name for consideration for one of the officer or Council positions for 2010-2011. A "strong preference" will be given to nominees for Council member positions who have not previously been elected to the Section Council.

If you have a **strong history of service to the Section,** please consider enhancing your involvement as an officer or Council member by submitting your name to the Nominating Committee along with a list of your Section activities. Please note that the Nominating Committee must submit its report not later than June 11, 2010, so send in your letter of interest by May 7 if you would like to be considered.

The Section office maintains a profile of all **active** Section members. If you wish to receive a copy of your profile, please contact Marilyn Neforas at neforasm@staff.abanet.org and she'll be happy to provide it.

The following Section members have been appointed as the Nominating Committee:

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Any Section member wishing to make a recommendation to the Nominating Committee is encouraged to contact directly any of the above-named committee members.

The Nominating Committee will report to the Section at the Annual Business Meeting on Saturday, Aug. 7, 2010, at 2 p.m., at the Westin St. Francis in San Francisco, California, where the Section membership will vote on the nominees. The committee's report will also be available on the Section Web site on or before June 7, 2010.

SBC and large concerns will be viewed as affiliates, thereby causing the joint venture to exceed the size standard of small business set-asides.[19]

The SBA regulations recognize three limited exceptions to the general rule that members of a joint venture are presumed to be affiliated with each other for size determination purposes. Specifically, the regulations carve out limited exceptions from the general affiliation rules for Mentor Protégé joint ventures, for SBC-only joint ventures, and for 8(a) joint ventures.

Mentor Protégé Joint Ventures. The first exception from the general SBA affiliation rules allows an SBC to joint venture with a large business concern under the SBA's Mentor Protégé Program established by 13 C.F.R. § 124.520.[20] The SBA's Mentor Protégé Program is designed to encourage large business concerns to team with, or mentor, small business concerns in performing federal prime contracts. The assistance provided by the mentor concern may be technical or management assistance, financial assistance in the form of investment or loans, performance assistance as a subcontractor, or teaming with the SBC as a joint venturer to compete as a prime contractor for small business set-asides.[21]

The mentor protégé exception provides a unique opportunity for SBCs and large concerns to pool their resources and compete for small business set-asides.

The mentor and protégé firms must enter into a written agreement setting forth the protégé's needs and describing the assistance that the mentor is committed to providing to address those needs.[22] The agreement must specify that the mentor will provide such assistance to the protégé for a period of at least one year, and the SBA must approve the mentor protégé agreement.[23]

The protégé must be a "socially and economically disadvantaged" small business concern, that is, an 8(a) SBC under the SBA regulations.[24] The protégé must also be in the developmental stage of the 8(a) program, have not yet received an 8(a) contract, or have a size that is less than half the size standard corresponding to its primary NAICS code, and be in good standing in the 8(a) program.[25] To qualify as a mentor, a concern must demonstrate that it possesses favorable financial health (including profitability for at least two years), good character, does not appear on the federal list of debarred or suspended contractors, and can impart value to a protégé due to lessons learned and practical experience gained through the 8(a) program or from its general knowledge of government contracting.[26]

Mentor protégé teaming arrangements are generally immune from the SBA affiliation rules. The SBA regulations specifically state that no determination of affiliation will be found between a mentor and protégé firm based solely on the mentor protégé agreement, the assistance provided by the mentor to the protégé, or the mentor's ownership of up to 40 percent of the protégé.[27] As such, an 8(a) that joint ventures with a large business concern will not be presumed to be affiliated with that large business concern like non-mentor protégé joint venturers are.

The mentor protégé exception provides a unique opportunity for SBCs and large concerns alike to pool their resources and compete for small business set-asides. The drawback to this exception is that it is a narrow carve-out from the general rule that deems all joint venturers to be affiliated, and the exception is cumbersome to set up and manage. However, SBCs that are willing and capable of pursuing a mentor protégé joint venture can enjoy a significant edge over other SBCs because, in theory, the mentor protégé arrangement allows the protégé to take advantage of the mentor's vast knowledge, experience, and resources. Similarly, it allows the mentor to participate in a market for which it is otherwise ineligible.

SBC-only Joint Ventures. The second exception from the general SBA affiliation rules allows an SBC to joint venture with another SBC to compete for a small business set-aside as long as both concerns individually satisfy the procurement's size standard, and (1) the procurement is a "bundled" procurement where the procuring agency consolidated two or more procurement requirements previously performed under separate smaller contracts into a single procurement that is likely unsuitable for a lone SBC to perform due to the size of the procurement or the complexity of the performance required; or (2) the procurement is not a "bundled" procurement and the dollar value of the procurement exceeds half of the size standard where the size standard is based on average annual receipts, or the procurement exceeds $10 million where the procurement size standard is based on number of employees.[28]

This exception encourages SBCs to compete in joint ventures for small business set-aside contract awards that those SBCs would otherwise be unable to perform as individual concerns due to the size and complexity of the procurement. Because the SBA wants to encourage such beneficial teaming arrangements between SBCs, no affiliation will be found between two SBC members of a joint venture as long as the project the joint venture seeks to perform is at least half of the size of the size standard of the procurement, or in excess of $10 million. This exception can be of tremendous benefit to two SBCs that seek to pool their resources and compete for procurements they would otherwise be incapable of performing on their own.

8(a) Joint Ventures. The third and final exception for joint ventures from the general SBA affiliation rules is limited to 8(a) set-asides. Specifically, this exception allows an 8(a) SBC to joint venture with one or more 8(a)s or non-8(a) concerns to compete for an 8(a) small business set-aside as long as all members of the joint venture satisfy

the size standard of the procurement, the size of at least one of the 8(a)s is less than half of the procurement's size standard, and the dollar value of the procurement exceeds half of the applicable size standard based on average annual receipts or the procurement exceeds $10 million where the size standard is based on the number of employees.[29]

This exception provides opportunities for one or more 8(a)s to joint venture with each other, or with other small non-8(a) concerns, without being affiliated with each other. All of the members of the joint venture must be SBCs with regards to the procurement at issue, and at least one of the 8(a)s must be particularly small in size, or less than half of the size of the procurement's size standard. Such joint ventures are particularly useful in the construction industry where several 8(a)s, along with non-8(a) contractors, can pool their resources, management, and technical capabilities to compete for 8(a) set-asides.

When to Use Teaming Agreements

SBCs are authorized by the SBA regulations to subcontract portions of set-aside contracts to other large or small business concerns unless specifically prohibited from doing so by statute, regulation, or the solicitation.[30] SBCs commonly form these prime contractor/subcontractor arrangements through the use of teaming agreements. Teaming agreements are valuable vehicles that enable SBCs, acting as prime contractors, to subcontract work to other SBCs or to large businesses in order to compete for and perform small business set-asides. Teaming agreements allow SBCs to maintain their small business size standard and to obtain subcontracting assistance from other SBCs or large business concerns.

There are limits on the amount of work that an SBC prime contractor may subcontract to other contractors. Specifically, an SBC prime contractor must perform: (1) at least 50 percent of the cost of the contract incurred for personnel with its own employees on a services contract (except for construction); (2) at least 50 percent of the cost of manufacturing supplies or products on a supplies or products contract; (3) at least 15 percent of the cost of the contract (not including the cost of materials) with its own employees on general construction contracts; and (4) at least 25 percent of the cost of the contract (not including the cost of materials) on a construction contract calling for a "special trade contractor" as the prime contractor.[31]

Unlike joint venturers, parties to teaming agreements are not presumed to be affiliated with each other based solely on their teaming relationship, but team members can be found to be affiliated under the general SBA rules of affiliation. Specifically, parties to teaming agreements may be found by the SBA to be affiliates based on common control or management (13 C.F.R. § 121.103(a)), identical or substantially identical business or economic interests (13 C.F.R. § 121.103(f)), or the "Ostensible Subcontractor" rule (13 C.F.R. § 121.103(h)(4)).

SBCs must ensure that they team only with concerns that do not raise a significant appearance of affiliation. To successfully navigate the SBA's affiliation rules, an SBC should avoid teaming agreements with concerns that (1) share common ownership or control with the SBC; (2) have identical business and economic interests as the SBC; or (3) would be deemed to form an "ostensible subcontractor" relationship with the SBC. SBCs and their teaming partners should be wary of teaming exclusively with the same subcontractors over and over, as this practice may lead to a claim that the two concerns have substantially identical business interests, especially if the two concerns do not have similar teaming relationships with third-party contractors. An SBC's failure to weed out these potential affiliatory relationships from its teaming arrangements makes it susceptible to protests of its size status based on affiliation principles.

The "Ostensible Subcontractor" Rule

The "Ostensible Subcontractor" rule is oftentimes the most common type of affiliation found between a prime contractor and the contractors with which it teams. An ostensible subcontractor is one that "performs primary and vital requirements of a contract," or is a subcontractor that the prime contractor is "unusually reliant" upon.[32] The SBA regulations affiliate a prime contractor with all of its ostensible subcontractors for size determination purposes.[33] The purpose of the rule is to prevent other than small firms from forming relationships with small firms to evade the SBA's size requirements.

As with other forms of affiliation, the finding of affiliation based on the "Ostensible Subcontractor" rule will likely cause an SBC prime contractor to exceed the size standard of the procurement for which it is competing. Therefore, any relationships between an SBC prime contractor and one of its subcontractors that could potentially be characterized as an ostensible subcontractor relationship should be avoided.

The SBA looks at all aspects of the relationship between an SBC prime contractor and its subcontractors to determine if an ostensible subcontractor relationship exists, including the following factors: (1) the terms of the prime contractor's proposal, to include management of the contract, technical responsibilities of the parties, and the percentage of the work subcontracted to the large concern; (2) the terms of the teaming agreement between the prime contractor and its subcontractors, specifically provisions dealing with bonding assistance; and (3) whether the subcontractor is an incumbent contractor on a procurement and ineligible to submit a proposal because it exceeds the size standard of the procurement.[34] While these factors are important to determining whether there is an ostensible subcontracting relationship, the factors are not all-inclusive. The SBA regulations specifically require that a "totality of the circumstances" analysis be conducted when determining whether such a relationship exists.

Any SBC prime contractor on a project, whether the prime contractor is a joint venture or an independent contractor, is susceptible of teaming with an ostensible

subcontractor and triggering affiliation between the prime contractor and the subcontractor. This includes a mentor protégé arrangement where the protégé serves as the prime contractor on a small business set-aside and subcontracts significant work to its mentor to the extent that the protégé is "unusually reliant" on that mentor to perform.

The key for an SBC to avoid falling victim to the ostensible subcontractor trap is to ensure that its proposal, proposal-related documentation, and teaming agreements do not indicate, on their face, that an ostensible subcontractor relationship exists. Specifically, SBCs must be careful not to "oversell" the technical expertise, past experience, or work to be performed by their subcontractors in the proposal or proposal-related documentation.[35]

While it may be necessary for an SBC to emphasize the positive qualities of a large subcontractor to enable it to compete effectively for a contract award, the SBC does not want to make it blatantly obvious that the SBC is wholly dependent or "unusually reliant" on the large subcontractor to perform. An SBC must ensure that it proposes to perform a significant portion of the contract work or management with its own resources, or to spread this work and management out amongst multiple subcontractors to ensure it is not "unusually reliant" on any one subcontractor.[36]

At the same time, an SBC prime contractor does not want to minimize the actual work to be performed by its subcontractors. The failure of an SBC prime contractor to sufficiently detail the work to be performed by its own employees on the one hand, and by its subcontractor employees on the other, will be interpreted to the SBC's detriment during an ostensible subcontractor analysis.[37] In sum, an SBC's proposal and any documentation produced with that proposal can be used against it by the procuring agency, and possibly by other competing offerors, to challenge on "ostensible subcontractor" grounds the SBC's size and eligibility to compete for small business set-asides. Therefore, SBCs must ensure that their proposals are tightly crafted to ensure that a reasonable reading of the proposal and its accompanying documents does not raise the appearance of an ostensible subcontractor relationship. PL

Endnotes

1. 13 C.F.R., Pts. 121-134 (2005); FAR Subpart 9.6.
2. 13 C.F.R. § 121.201.
3. 13 C.F.R. §§ 121.103, 121.201; *see also* Size Appeal of Channel Logistics, LLC, SBA No. SIZ-5019 (2008) (a concern's receipts are defined as its "total income" plus "cost of goods sold" as those terms are defined and reported on its federal tax returns); Size Appeal of Weidlinger Associates, Inc., SBA No. SIZ-4846 (2007) (the SBA determines the number of employees by calculating the average number of individuals employed by a concern and its affiliates, including part-time employees, during the preceding 12 months).
4. 13 C.F.R. § 121.201.
5. 13 C.F.R. § 121.103(a)(1).
6. 13 C.F.R. § 121.103(c)-(e).
7. 13 C.F.R. § 121.103(a)(1); *see also* Size Appeal of Eagle Pharmaceuticals, Inc., SBA No. SIZ-5023 (2009) (control over a concern will exist where a person or entity has the power to veto or block certain actions of the concern, or to exercise "negative control" over the concern, even when the controlling person or entity owns or controls less than 50 percent of the concern).
8. 13 C.F.R. § 121.103(a)-(h).
9. 13 C.F.R. § 121.103(a)(5); *see also* Size Appeal of Taylor Consultants Inc., SBA No. SIZ-5049 (2009) ("Affiliation through the totality of the circumstances means that if the evidence is insufficient to show affiliation for a single independent factor (13 C.F.R. § 121.103(c), (d), (e), (f), or (g)), the SBA may still find the businesses affiliated under the totality of the circumstances where the interactions between the businesses are so suggestive of reliance as to render the businesses affiliates.") (citations omitted).
10. *Size Appeal of Taylor Consultants*.
11. 13 C.F.R. §§ 121.104(d), 121.106(b)(4)(i).
12. FAR 9.601.
13. FAR 9.602(a)(1)-(2).
14. FAR 9.603.
15. FAR 9.601(1).
16. FAR 9.601(2).
17. 13 C.F.R. § 121.103(h).
18. 13 C.F.R. § 121.103(h)(2) (emphasis added).
19. *See* Size Appeal of Medical and Occupational Services Alliance, SBA No. SIZ-4989 (2008) (firms that submit offers on a particular procurement as joint venturers are "affiliates with regard to that contract, and they will be aggregated for the purpose of determining size for that procurement.").
20. 13 C.F.R. § 121.103(h)(3)(iii). A number of other agencies besides the SBA have Mentor Protégé Programs, including the Department of Defense, Department of State, Department of Energy, Department of Veterans Affairs, NASA, and the FAA.
21. 13 C.F.R. § 124.520(a).
22. 13 C.F.R. § 124.520(e).
23. *Id*.
24. *See* 13 C.F.R. § 124.101.
25. 13 C.F.R. § 124.520(c).
26. *Id*.
27. 13 C.F.R. § 124.520(d)(4).
28. 13 C.F.R. § 121.103(h)(3)(i).
29. 13 C.F.R. § 121.103(h)(3)(ii).
30. *See* 13 C.F.R. § 125.6.
31. 13 C.F.R. § 125.6(a). The SBA Regulations also set minimum performance standards for SBC prime contractors on small business contracts set-aside for HUBZone or Service Disabled Veteran Owned (SDVO) SBCs. *See* 13 C.F.R. § 125.6(b)-(c).
32. 13 C.F.R. § 121.103(h)(4).
33. *Id*.
34. *Id*.
35. *See* Size Appeal of TKTM Corp., SBA No. SIZ-4885 (2008) (ostensible subcontractor relationship existed where prime contractor indicated in its proposal that its subcontractor would perform approximately 25 percent of the work, the prime contractor was reliant on the subcontractor's "enormous capacity" and its heavy equipment, and the prime contractor would perform primarily administrative functions); Size Appeal of RTL Networks, Inc., SBA No. SIZ-4923 (2008) (ostensible subcontractor relationship existed where prime contractor was unduly reliant on the past performance of its subcontractor and planned to hire the entire incumbent staff of its subcontractor).
36. *See* Size Appeal of Alutiiq International Solutions LLC, SBA No. SIZ-5098 (2009) (subcontractor that was going to perform approximately 45 to 49 percent of the contract work was not an ostensible subcontractor).
37. *See* Size Appeal of ACCESS Systems, Inc., SBA No. SIZ-4843 (2007) (prime contractor's failure to segregate out which duties each of its team members were going to perform on the contract was an indication of a possible ostensible subcontractor relationship).