

Prime, Sub or JV Partner What is the Right Role for your Company?

Donna Dominguez & Tom Marcinko | February 28, 2018

About Aronson LLC

- Thinking ahead for clients for more than 55 years
- 250+ professionals located in Rockville, MD
- 80+ professionals dedicated to supporting government contractors
- Aronson helps clients rethink the way they approach their business through innovative, industry-specific services and advice:
 - Assurance and Tax
 - Deltek Systems and Outsourcing
 - Financial and Contract Compliance
 - GSA Schedules
- www.aronsonllc.com/blogs/fedpoint/ – News and trends and insight for today's savvy government contractor

Awards & Accolades



Accounting Today's Top 100 & Capital Region Leader

Aronson has been recognized year after year as an industry leader of the country and mid-Atlantic by *Accounting Today*. Our firm was included in the Top 100 list and ranked as the #1 full-service CPA firm in the Capital Region. *Accounting Today* conducts an annual survey to identify and rank the best firms in the country throughout 10 major geographic regions.

INSIDE Public Accounting's Top 100

Aronson has been continuously recognized by *INSIDE Public Accounting* as one of the best accounting firms in the country. The Top 100 list is the longest running, most comprehensive, and accurate analysis of America's top firms.

Washington Business Journal's Top 25

Aronson has been highlighted for another year in the *Washington Business Journal's* 2017 Book of Lists. Our firm was ranked #13 by metro-area professional employees on the *Washington Business Journal's* Top 25 list of accounting firms in the DC Metropolitan area.

The Washington Post's Top Workplace

Aronson has been recognized as a Top Workplace by *The Washington Post* for a third year. In 2017, Aronson received a Top 10 ranking in the mid-size companies category and was the highest ranked accounting firm on the list.

Washington Business Journal's Best Place To Work

2017 marks the seventh time Aronson has been recognized by the *Washington Business Journal* as a Best Place to Work. In 2017, Aronson received a Top 3 ranking in the extra-large companies category and was the highest ranked accounting firm on the list.

Northern Virginia Chamber of Commerce's Outstanding Corporate Citizen

Aronson was recognized as an Outstanding Corporate Citizen by the Northern Virginia Chamber of Commerce. This award honors companies going above-and-beyond in their corporate social responsibility efforts. Along with giving more than \$1.6M to worthy causes since 2004, Aronson also encourages community volunteerism and involvement.



“Well of course I’m not Santa.
He contracts out.”

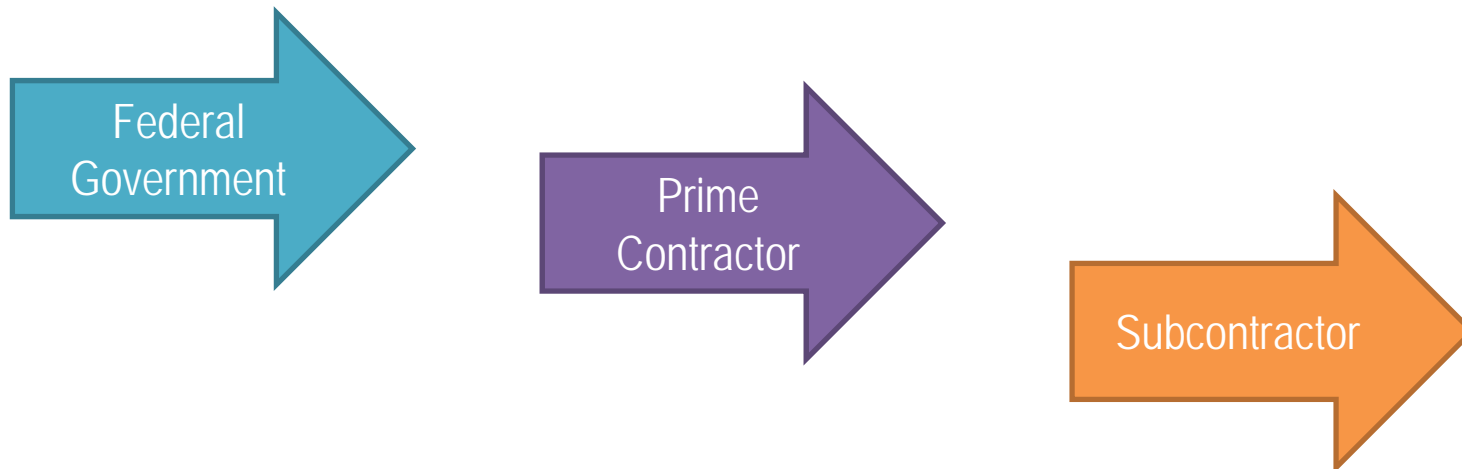
Introduction

Federal Acquisition Regulation (FAR) 9.6 authorizes contractors to form teams to compete for Government contracts based on a prime / sub relationship or a joint venture.

- Prime Contractor receives contract directly from Government and awards subcontracts to its teaming partners
 - Existing legal entities
- Joint Ventures
 - An association of businesses that engage in and carry out a specific or limited-purpose business venture for joint profit for a defined period of time
 - Establishes a new legal entity to be the prime contractor
 - JVs can award subcontracts

Part 1: To Prime or Sub, that is the Question?

- Primes and Sub, while both government contractors, are treated very differently by the FAR
- Some contractors are more comfortable in one role than the other



Proposals

Prime has

- High cost of entry
 - Responsibility for preparing the proposal
 - Significant investment in B&P



Subcontractor (Sub) has

- Low cost of entry
 - Limited responsibility for preparing the proposal
 - Less significant investment in B&P
- Opportunity to learn



Legal Status

- Prime contract subject to Federal common law

FEDERAL LAWS



- Subcontract subject to state law



Relationship with the Customer

- **Prime** has privity with the government
 - Works with the Contracting Officer (CO) & the Contracting Officers Technical Representative (COTR)
 - Submits deliverables, invoices, Request for Equitable Adjustments (REA's) & claims directly to the Government
 - Paid by the Government
- **Sub** has no privity with the Government
 - Works with the Prime Project Manager and Subcontract Administrator
 - Can only speak to the Government with the Prime's position
 - Submits deliverables, invoices, REA's & claims to the Prime
 - Paid by the Prime

Proprietary Information

- Prime discloses to the Government



- Sub discloses to the Government in a sealed package
 - Fee is not proprietary
 - Sub invoices / cost reports

Contract type

- When contracting with the Federal Government, they decide the prime contract type
- Sub and Prime relationship you can negotiate subcontract type
 - Doesn't have to be the same as the prime contract

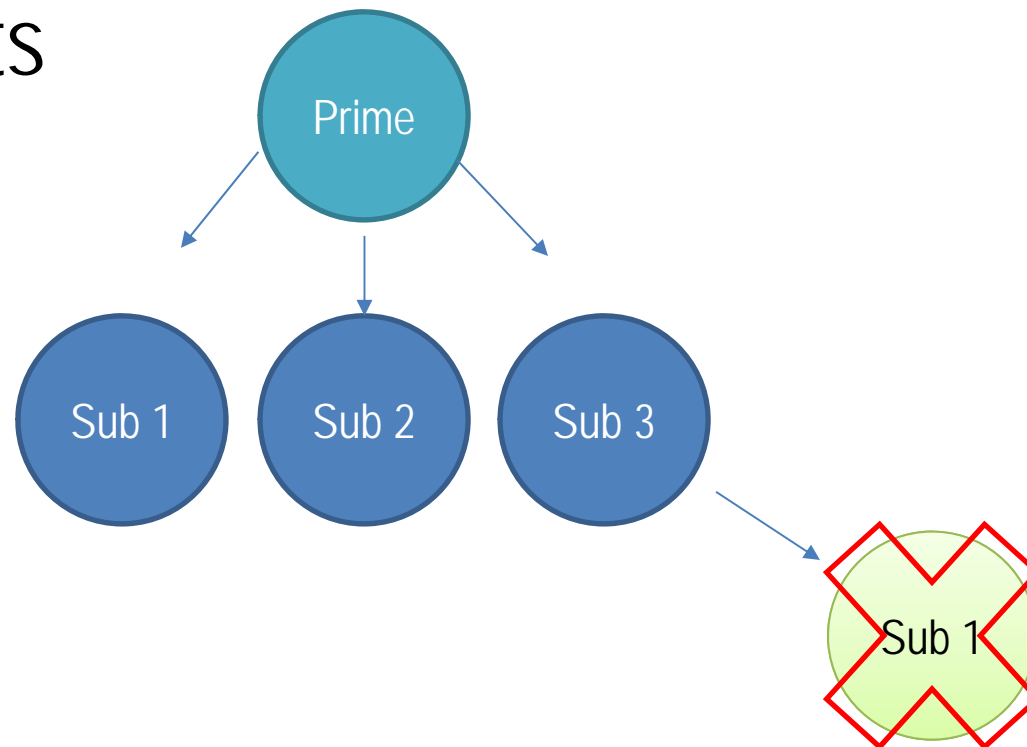
Bid Rates

- The Government does not tell a Prime what rates to bid
- Primes frequently give subs target rates



Subcontracting

- Prime Contractors frequently award subcontracts



- Subcontractors rarely award 2nd tier subcontracts

Subcontracting

Prime contractors need:

- Need responsibility determination
- Commercial Item Determination
- Small business subcontracting
- Competition / Sole Source Justifications
- Obtain subcontractor reps and certs
- Cost & price analysis
- Standard and flow down terms and conditions

Subcontracting

Prime contractors need:

- Advance notification and consent
- Adequate business systems
- Subcontract management and administration
- Subcontract close out
- A subcontract administer
- Purchasing policies and procedures plus internal controls
- To pass a CPSR (maybe)

Adequate Business Systems

- Prime contractors may need adequate business systems
 - Accounting
 - Government Property
 - Purchasing
 - Estimating
 - Earned Value Management
 - Material Management and Accounting
- Subcontractor, with the possible exception of Accounting, is unlikely to need approved business systems
- Adequacy of subcontractor business systems can be determined by 3rd party.

Past Performance

- Easier for Prime Contractors to document past performance
- Government rates and reports the Prime Contractor's past performance
- Neither Government nor prime reports on subcontractor past performance

Administrative Requirements

- Prime Contractor, but not subcontractors, are required to;
 - Register in SAM (System for Award Management)
 - Report 1st tier subcontract award and subcontractor executive compensation
 - Report into FAPIIS (Federal Awardee Performance and Integrity Information System)

Part 2: Joint Ventures

JVs can be populated or unpopulated

- A populated JV has its own
 - Employees
 - Cost Structure
 - Business systems
- An unpopulated JV
 - Is a pass through entity
 - Obtains employees via subcontracts awarded to the JV partners or other firms
 - Utilizes the cost structure of the JV partners
 - Possible G&A rate
 - Utilizes the business systems of the JV partners

Advantages of a JV

Joint Ventures may offer the following advantages over a prime / sub arrangement

- Tax avoidance
- Present past performance collectively
- Enforceable
- Better cost structure for populated JVs
 - Indirect cost allocations
 - Cheaper fringe benefits
 - CAS flexibility

Advantages of a JV

JVs can overcome the small business size-standard affiliation rules

- Traditional rule
 - JV partners considered to be affiliated, combined size used for size standards purposes
 - JVs not typically used for set-aside contracts
- Current rule
 - The JV will be considered small as long as both partners qualify under the size standard

Advantages of a JV

JVs can overcome the small business size-standard affiliation rules to the benefit of large businesses

- Mentor – Protégé JVs
 - Qualify as small if the protégé is small under the applicable size standard
 - Protégé must own at least 51% of the JV
 - JV can subcontract to the JV partners giving the LB partner more of the work than possible under teaming agreement relationship
- Must be approved by the SBA
- Re-use (per SBA; 3 awards over 2 years)

Disadvantages of a JV

Compared to a prime / sub relationship

- JVs are more expensive to create
 - Corporate filings
 - Develop new indirect rates structure / bid rates
 - Attorney and tax accountant fees
- Management structure
 - Management structure for 50 / 50 JVs unclear
 - An Large Business has to cede control to the Small Business
- Easier to terminate a subcontract than to dissolve a JV

Disadvantages of a JV

Compared to a prime / sub arrangement

- Award to JV doesn't necessarily increase the corporate G&A base
- JV past performance may not transfer to the individual partners

Conclusion

- Utilize a JV
 - For financial reasons
 - To qualify for small business set-asides

Conclusion

- Subcontractors have
 - Less control
 - Less responsibility
 - Fewer compliance requirements
 - Less risk
 - Less opportunity for growth

Conclusion

- Prime contractors have
 - More control
 - More responsibility
 - More compliance requirements
 - More risk
 - More opportunity for growth

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Tom Marcinko is a principal consultant in Aronson's Government Contract Services Group. He is responsible for providing clients with a broad variety of both pre- and post-award support. With over 30 years of government contracting experience, he specializes in proposal development, contract and subcontract administration, FAR compliance, small business programs, and government audits.

Tom is a featured speaker at Aronson events and a frequent guest speaker for numerous organizations, including the GWSCPA, VSCPA, the Northern Virginia Technology Council, the Washington Board of Trade and the NCMA. Tom presents training classes on a variety of subjects, including several courses in the fundamentals of government contracting for the University of Virginia's government contracting certificate program. He has also written articles on government contracting for the NCMA Contract Management magazine and other periodicals.

Tom earned his bachelor's degree in accounting from the University of Central Florida and his law degree from the University of Florida. He is a member of the Florida Bar and the National Contract Management Association (NCMA).



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Donna Dominguez is a director in Aronson LLC's Government Contract Services Group, where she provides a wide range of financial compliance advisory services for government contractors. She is experienced in matters related to Federal Acquisition Regulations (FAR), cost accounting standards (CAS), incurred cost submissions, DCAA/cognizant audit support, provisional billing rates, establishing/revising indirect rate structures and cost proposal support.

Donna works with contractors to help them grow their business while keeping their accounting systems adequate in the eyes of the government and their billing systems current and relevant. She is also involved in supporting the government contracting community as a frequent guest speaker on a variety of compliance topics.

Donna earned her bachelor's degree in accounting from the University Maryland and has completed additional coursework in contracts administration. She is a contributor to Aronson's Fed Point blog and has co-authored articles for NCMA Contract Management Magazine.



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