

## Antitrust Teaming Arrangements



[Reference: FAR 3.3, 9.6; DEAR 903.3; DCAA Contract Audit Manual Vol. 1, Section 4-705; FTC/DOJ Antitrust Guidelines for Collaborations Among Competitors (April 2000)]

### Overview

This section provides guidance that is in use Government-wide to assist the Department's Contracting Officers in identifying whether certain contractor teaming arrangements may unduly restrict competition.

Although no specific situations within the Department have been identified to date, circumstances involving anticompetitive teaming arrangements that may inhibit competition could arise in DOE acquisitions, particularly in major site/facility management acquisitions. Recent Government-wide interest in teaming arrangements has focused on the potential for such arrangements to give rise to violations of federal antitrust statutes, as well as the impact on full and open competition in the award of Federal agency contracts.

As a result, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) jointly issued the publication entitled, *Antitrust Guidelines for Collaborations Among Competitors*, dated April 2000. These FTC/DOJ Guidelines are available on the Internet at:

<http://www.ftc.gov/bc/guidelin.htm>.

### Background

While all teaming arrangements and other collaborations among potential competitors are not anticompetitive, and may in fact be procompetitive, it is possible that such arrangements may lead to practices that violate antitrust statutes and hinder competition in the award of contracts. Federal Acquisition Regulation (FAR) Subpart 3.3 identifies contractor practices that may eliminate competition or restrain trade. The FAR further requires agency personnel to report to the Attorney General any bids or proposals that evidence a violation of antitrust laws, which are intended to ensure that markets operate in a competitive environment.

One such area not currently addressed in the FAR is the practice of forming exclusive teaming arrangements among contractors competing for the award of Government contracts. Exclusive teaming arrangements occur when two or more companies agree to team together to pursue the

award of a Government contract. Contractor teaming arrangements have become increasingly common throughout the Federal Government.

### **Federal Trade Commission and Department of Justice Guidelines**

The FTC/DOJ Guidelines recognize that, in today's market, competitors often need to collaborate. Companies that enter strategic alliances often do so in response to the dynamic competitive forces that are reshaping much of the economy.

Moreover, many collaborations are being undertaken to enable companies to expand into other markets, fund expensive innovation and research efforts, and lower costs. However, the publication also notes that some collaborations may raise competition issues and explains how the FTC and DOJ analyze antitrust issues associated with these collaborations.

The FTC/DOJ Guidelines contain the following types of information which can be used by DOE acquisition officials in assessing the potential anticompetitive nature of contractor teaming arrangements:

- A general set of questions and principles that must be flexibly applied when evaluating agreements among competitors.
- The antitrust enforcement policy of the FTC and DOJ regarding competition issues raised by collaborations among competitors.
- Guidance to assist businesses in better understanding possible antitrust implications when evaluating proposed transactions.
- Information concerning the identification of procompetitive benefits of competitor collaborations, and those likely to harm competition.

Each situation must be reviewed and analyzed on its own merits within the structure of the Guidelines.

### **FTC Point of Contact**

For further information relating to the guidance contained in *Antitrust Guidelines for Collaborations Among Competitors*, contact the FTC Policy Planning staff at 202-326-3712. Review the document at <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>