

Subcontractor Training

Doing Business with Government Prime Contractors

NH Government Contracting Assistance Center



- Why be a Subcontractor?
- Subcontract Basics
- Contractual info – the government role
- Marketing & Sales
- The Prime/Sub Relationship
- Building Past Performance
- Getting Paid

Topics

- A good source of business;
- Not ready/able to be a prime;
 - Capabilities too narrow to be Prime
 - Limited project management
 - Capital availability/cash flow
 - Business systems weak
 - Inadequate bonding capacity
 - No “Past performance”

Why be a Sub?

- Subcontractor Definition in FAR 44.101:
 - “any supplier, distributor, vendor or firm that furnishes supplies or services to, or for, a prime contractor or another subcontractor.”
- Subcontract:
 - “contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.”
- Can be 2nd, 3rd tier subcontractor
- Does not have a contractual relationship with Government.

What's a Subcontractor?

- FAR 2.101 – “Small Business Subcontractor” means a concern, including affiliates, that for subcontracts valued at-
 - \$10,000 or less, does not have 500 employees; and
 - More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR Part 121 (see FAR 19.102) for the product or service it is providing on the subcontract.

Small Business Subcontractor

- Normally, contractor team arrangements (including subcontractors) will be disclosed in an offer (bid or proposal).
- If not, should be disclosed prior to making the subcontract arrangement final (execution of subcontract).
- Government may require the right to consent to any/all subcontracts
- Prime is always fully responsible to government, regardless of team arrangements.

Government Rights

- A flow-down is a clause or requirement in the Prime contract that is duplicated in subcontracts.
- Flow-downs may be required, or may be optional.
- Flow-downs are one way around contract privity.
- What's privity of contract?

Contract Flow-Downs

- Government has Privity of Contract with Prime – may provide direction to the Prime to perform tasks agreed to in contract.
- Prime has privity with its subcontractors.
- Government normally does not have privity with subcontractors.
- Doesn't mean Government must be “hands off” subcontractors, but it can't direct their efforts.

Privity of Contract

- For Construction (broadly defined)
 - Davis-Bacon (prevailing wage)
 - Hours & Safety standards
 - Apprentices & Trainees
 - Payrolls & records
 - Copeland Act
 - Etc.
- Project Labor Agreements
- Service Contract Act
- Consent & Advance Notification
- Commercial items

Some Important Flow-downs

- E-Verify
- Consent & Advance Notification
- Commercial items
- Buy-American Act/Berry Amendment
- ITAR, EAR
- Cybersecurity

Some Important Flow-downs

- Read your subcontract!!
- Look up the references, especially FAR 52.xxxxxx.
- Ask questions!
- Ask to see Government contract clauses in the Prime contract.
- Know your obligations.

How to Approach Flow-Downs



Thank You – Break Time!

- Positioning – how do you add value to the team?
 - Responsive and Responsible
 - Quality product/service
 - Fair price
 - Inspire confidence – you know the ropes
 - Easy to work with – a team player
 - No worries – few problems; you “make it right”.

Marketing as a Subcontractor I

- Promotion
 - Use web page, marketing literature to show that you're "government savvy"
 - DUNS #, CAGE & NAICS codes visible.
 - Small business and socio-economic factor.
 - List agencies you've done work for.
 - List program experience: BRAC, for example.
 - Use (correctly) government terminology

Marketing as a Subcontractor II

- Finding Opportunities:
 - SBA SUB-Net - <http://web.sba.gov/subnet>
 - SBA Subcontracting Opportunities – <https://www.sba.gov/contracting>
 - Matchmakers - <http://www.dodneregional.org/>
 - OSDBU -

Marketing as a Subcontractor III

More Sources:

- FedBizOpps – www.fbo.gov
 - Contract awards
 - Interested Vendors Lists
 - IDIQ searches/lists
- Federal Procurement Data System - https://www.fpds.gov/fpdsng_cms/
- www.USASpending.gov

Marketing as a Subcontractor III

Still other sources:

- Society of American Military Engineers - <http://www.sameboston.org/>
- NAVFAC primes - http://www.navfac.navy.mil/products_and_services/sb/opportunities/subcontracting_op.html
- GSA primes - <http://www.gsa.gov/portal/category/108219>
- Search “sblo contact list”

Marketing as a Subcontractor III

- Be knowledgeable about the customer
- Strengthen the team
- Understand the project
- Look for ways to make the Prime successful
- Minimize risk for all parties
- Inspire confidence
- Price fairly

Sales Strategies

- General Dynamics - <http://www.generaldynamics.com/suppliers>
- BAE Systems - <https://baesystems.hicx.net/bae/hicxesm-portal/app/login.html;jsessionid=2eyvybc0yhsgghifzhl7m24o8>
- BAE Electronic Systems - <http://www.baesystems.com/en-us/our-company/inc-businesses/electronic-systems/supplier-center/electronic-systems-supplier-diversity>
- Raytheon - http://www.raytheon.com/suppliers/supplier_diversity/
- Search “*company name supplier diversity*”

Supplier Registrations

- Be “in the loop” – this requires effort.
- Communicate – especially if you see a problem developing.
- Don’t go around the Prime!
- Don’t be a doormat.
- Only the government can issue a change order to the Prime; only the Prime can issue one to you.

Prime – Subcontractor Relationships

- Know as much as you can about the whole project.
- Get as much exposure as you can to the government agency staff.
- It's ok to ask for help – it's ok to say that you want to be a Prime someday.
- Keep a log with contacts.
- Ask for a letter evaluating your performance

Building Past Performance

- Do the work up front – don't be afraid to require specific payment terms in your contract.
- You will have no recourse to and very limited help from the government, so be firm.
- Insist on your right to fair and predictable payment, as agreed.
- Don't accept vague terms.

Getting Paid



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**Legal Protections for Subcontractors on
Federal Prime Contracts**

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Legislative Attorney

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<https://www.fas.org/sgp/crs/misc/R41230.pdf>

Congressional Research Service

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R41230

CRS REPORT

Prepared for Members and
Committees of Congress

- FAR Part 32
- Clause 52.232-5 look at **b(1)(iv) and c(2)**
- Clause 52.232-40
- https://www.acquisition.gov/far/html/52_232.html

FAR Payment Provisions

- **Handout on FAR clause flowdowns**
- FAR - <http://farsite.hill.af.mil/>
- Labor Laws -
<http://www.dol.gov/whd/govcontracts/dbra.htm>
- E-Verify - www.uscis.gov/e-verify

Key Flow-down Links

- Consent & Advance Notification -
http://www.acquisition.gov/far/html/Subpart%2044_2.html
- Commercial Items -
<https://www.acquisition.gov/?q=/browse/far/12>
- Size Standards:
http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf

More Flow-down Links



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