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Federal Government Contracting

4th Edition-1 January 2012



By The Author
of

ODYSSEY OF ARMAMENTS

MY JOURNEY THROUGH THE DEFENSE INDUSTRIAL COMPLEX

KEN LARSON

AN INSIDE VIEW OF AMERICA'S DEFENSE COMPANIES AND
THE ENVIRONMENT IN WHICH WEAPONS SYSTEMS
HAVE BEEN PRODUCED OVER THE LAST 30 YEARS

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1. FORWARD

As a volunteer counselor, Ken Larson helps many small businesses with their planning and operations processes. Subsequent to serving two military tours in Vietnam, Ken spent over 30 years in federal government contract management with the nation's largest defense companies and ten years in small business consulting. He gets many inquiries from small companies wishing to enter or enhance their position in federal government contracting. This book is intended to assist in answering those questions. You can reach Ken at the following site:

<http://www.smalltofeds.com>

There are over 120 agencies or "Departments" in the federal government. Each of these agencies has a statutory obligation to contract from small business for over 20% of everything it buys. Contracting officers must file reports annually demonstrating they have fulfilled this requirement. Not fulfilling the requirement can put agency annual funding in jeopardy. You have a motivated customer in federal government contracting officers and buyers.

Large business, under federal procurement law, must prepare and submit annual "Small Business Contracting Plans" for approval by the local Defense Contract Management Area Office (DCMAO) nearest their headquarters. These plans must include auditable statistics regarding the previous 12 month period in terms of contracting to small businesses and the goals forecast for the next year. The federal government can legally terminate a contract in a large business for not meeting small business contracting goals. Approved small business plans must accompany large business contract proposals submitted to federal government agencies. Small businesses have motivated customers in large business subcontract managers, administrators and buyers.

This book is dedicated to Small Businesses who wish to succeed in Federal Government Contracting.



1. WHAT IS A SMALL BUSINESS FEDERAL GOVERNMENT “CONTRACTOR”?

INTRODUCTION

There is often confusion regarding the definition of the term, “Contractor” in government work. The term is used in a conflicting manner to describe companies, individuals and business relationships. It has different connotations within corporations as opposed to government agencies, and is often confused with terms like “Subcontractor”, “Supplier” or “Vendor”.

This article will define the term, “Contractor” and discuss the regulatory factors and practical considerations related to use of the term from a small business federal government contracting perspective.

DEFINITIONS

1. Contractor (As Used In Corporations)

The term “Contractor” in corporations often refers to an individual, performing work for a company while not on the payroll as an employee, having no taxes, benefits or deductions taken from their pay and not covered by any form of insurance. The company issues a purchase order to the individual at an hourly rate and submits a Form 1099 to the US government reporting what the contractor is paid for services. The contractor must self-insure during the contract period and pay taxes on the money earned at the end of the tax year.

Recently there has been a dramatic decrease in the use of individuals as contractors in large government contracting corporations due to class action law suits brought by individuals who maintained they were utilized as employees without the associated benefits. The existing contractor work force was either offered permanent positions or released. Since that time, the use of contractors by large government prime contractors has been principally in specialty roles.

Corporations may also utilize the term “Contractors” when referring to companies in the manner defined by Definition 2, below. It is common for large prime contractors to use the term to describe themselves, their competition or co-equal teaming partners in joint ventures. When this 2nd definition is used it refers to a company, duly registered with the state and the federal government.

2. Contractor (As Used In Government Agencies)

The term “Contractors” in government parlance refers to businesses, not individuals. To become a contractor to a government agency, you must therefore form your own business. Government agencies do not engage individual “Contractors” as defined in 1, above. If they want individuals to perform services they put them on the agency payroll. If they want to acquire specialized outside services they contract with companies.

3. Subcontractor

A "Subcontractor" is a company that takes on a flow-down of liability from a prime contractor to complete a major portion of a large scale job for the prime contractor's customer. The subcontractor is obligated to the prime contractually in an identical fashion as the prime is obligated to the government agency. The prime contractor issues a subcontract with a statement of work and flow down terms and conditions from the prime contract to the subcontractor. In many instances the government requires review and approval of major subcontractor selections and holds the prime contractor accountable contractually at the prime contract level for the subcontractor(s) efforts.

4. Supplier (or Vendor)

The term, "Supplier" connotes basically commercial relationships with companies that supply off the shelf parts and materials or simple, generic services. The General Services Administration (GSA) and other federal agencies also use the term to describe companies in negotiating supply schedules or in buying items under the commercial sections in the Federal Acquisition Regulation (FAR), such as FAR Part 12. Supplier contracts generally emphasize, price, delivery and matters such as warranty and do not involve -complex terms and conditions or the flow down of liability from the ordering firm prime contract.

REGULATORY FACTORS

The Federal Acquisition Regulation (FAR) clauses governing small business state that a company undertaking a small business set-aside prime contract must be capable of performing 51% of the work scope under the terms of that contract and may not subcontract (as in 3, above) any more than 49% of the effort. These FAR clauses do not limit 1099 contractors (as in 1, above).

Many small enterprises use independent contractors on call to fulfill the manpower requirements of their contracts and specify these personnel in their proposals as qualified individuals. When these clients grow in long term contracts they make such personnel permanent party if the contractors are willing. Often contingent hire agreements are used for that purpose while proposing major programs. You can download a generic agreement from the "References" Box Net cube in the left margin of this site.

Contractors (as in 1 above) may be used to the extent they are necessary to win, but bear in mind the government prefers to see permanent party, since that implies stability (the government is conditioned to the perception that individuals , as contractors come and go).

Small business should propose work scope under set aside programs in teaming agreements so that the prime (small business) is performing at least 60% of the effort with employees or contractors to avoid the appearance of a front by a larger company (even though the statutory requirement is 51%).

In many cases it is preferable for a start-up small business to become a subcontractor, rather than a prime, building past performance associated with government contracting and developing beneficial teaming relationships with experienced government contracting firms.

SUMMARY

It is possible for a small business to perform, in tandem, one or more of the "Contractor" roles discussed in this article. Sometimes multiple roles are established with the same corporation or agency. Please examine the following articles at this site for information related to this topic:

<http://www.smalltofeds.com/2009/07/multiple-front-marketing-in-small.html>

<http://www.smalltofeds.com/2009/05/generic-contingent-hire-agreement.html>

<http://www.smalltofeds.com/2009/05/small-business-teamiing-in-government.html>

<http://www.smalltofeds.com/2008/09/protecting-intellectual-property-and.html>

<http://www.smalltofeds.com/2008/07/small-business-government-contracting.html>

<http://www.smalltofeds.com/2007/03/small-business-federal-government.html>

It is vital to understand the "Contractor" role definition for each contractual commitment to insure suitable risk analysis, a good past performance record, conflict of interest avoidance and a solid reputation in the industry

2. SHOULD YOU CONSIDER SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING?

According to an article recently published in USA Today, the federal share of the economy is soaring, accounting for \$1 out of every \$4 and nearing the highest level since World War II:

http://www.usatoday.com/news/washington/2008-12-10-spending_N.htm?csp=34

There has been a dramatic increase recently in SCORE counseling requests from small businesses inquiring about entering federal government contracting. This article will address some basic things for you to consider in testing that prospect.

Your Business Plan

If you don't have a business plan in these changing economic times you need one and you should keep it a living document. It is the key vehicle to determine your path forward and convince people that can help you of your firm's potential. Loan officers and investors are interested in your business plan as a function of evaluating the thoroughness of your future vision and validating your funding forecast needs.

Please go to the SBA web site that guides you through the business planning process. I suggest you follow the site presentation and note the factors to consider. The link to the SCORE site business planning presentation is:

<http://www.sba.gov/smallbusinessplanner/plan/writeabusinessplan/index.html>

The following site contains samples of business plans:

http://www.bplans.com/sample_business_plans/all_plans.cfm

Ask yourself some strategic questions, such as what competition you envision, what your marketing plan will be, etc. Addressing some of these questions may take some research and that is all part of the process of putting in place your plan. It is your road map for the future.

Your business plan should be a repository for research on the federal government marketplace and how you fit into it. There are many agencies and government prime contractors to whom you may be able to sell your products or services.

Like any other customer, the government expects you to finance your business, meet

your payroll, pay your expenses and submit a bill for products and services delivered or rendered. The federal payment cycle is often 60 to 90 days, depending on whether or not you are a subcontractor to a prime corporation.

In federal government contracting you must also comply with the Federal Acquisition Regulation (FAR) and associated Cost Accounting Standards (CAS). Although these requirements are not "Rocket Science", they are different from commercial rules and generally accepted accounting practices (GAP). They have evolved over the years as the federal government has grown in the volume of goods and services it buys. Very few universities make FAR and CAS part of their curriculum and CPA's do not encounter them on a certification exam. Several articles at this site address the practical implications of FAR and CAS requirements for a small business.

The prudent, small businessperson reviews the potential impact of FAR and CAS on his or her business systems and processes before undertaking a government contract, particularly a cost plus or a time and materials contract. In many cases job cost accounting and long range budget planning are required to support pricing, overhead and general and administrative rates. Government contracts can run several months or even years.

Federal agencies form large-scale projects and use companies to service their needs by contracting specialized skills, sometimes bringing the contractors on site by labor category under time and material, cost plus or fixed rate contracts or by purchasing services or products at company facilities and remote sites.

In other cases, pre-established pricing and terms and conditions are negotiated with several suppliers in advance under omnibus contracts and separate delivery orders are issued competitively based on changing requirements. The General Services Administration (GSA) negotiates pricing and terms on multi-year schedules from which both federal and state agencies are permitted to buy.

Registration

One of the first steps that must be completed is registering your company to bid and become eligible for award of government contracts. Please visit the link below for the Central Contractor Registration (CCR) and notice the tips to make sure your file is as complete as possible.

<http://smalltofeds.blogspot.com/2006/12/registering-your-small-business-for.html>

Also note the North American Industrial Classification System (NAICS) Codes. Please make sure your CCR has the maximum number of codes for which you qualify, since the whole federal procurement system rides on those codes.

Self-Certification as a Small Business, a Small/Disadvantaged Business, a HUB Zone-

located enterprise, Woman-owned or Veteran-Owned Business is also part of the registration process. Also insure the narrative description of your services is complete.

Marketing

You should develop a capability statement (CAPE) for government contracts that is short and hard-hitting. It should be 1 page and should highlight the salient points of your products and offerings, your personnel and your qualifications. It should also include the specific information a contracting officer needs to place an order, such as your D&B Number, your government registration numbers, your North American Industrial Classification System (NAICS) codes and the like. These items are selected or provided by you or determined by the system when you register your company for government contracting.

The purpose of the capability statement is to respond to government postings requesting industry interest in forthcoming procurements. They are normally posted at the state and local sites referenced above and at FEDBIZOPPS, the federal government gateway to contracting:

<http://www.fedbizopps.gov>

A CAPE is useful in acquainting teaming partners with your expertise and government buyers with your small business designations and qualifications. It should be developed in PDF, JPG or similar formats that that can be emailed easily and readily opened.

The following link shows a typical capability statement by a small business government contractor: He may not be in exactly the same business as you are but you can get the idea of what a CAPE should look like and perhaps frame your own document by examining his:

<http://smalltofeds.blogspot.com/2007/01/seven-management-techniques-to-assist.html>

Understanding the Process

To propose and win federal government contracts you must become familiar with federal contract marketing, proposal preparation, negotiations and terms and conditions. It is a huge market, but a competitive one. Part of developing the final version of your CAPE will be to examine the market and pinpoint what is out there in the way of typical government bid solicitations that fit your line of work and then frame your document presentation.

The following additional reading will provide background for your research:

<http://smalltofeds.blogspot.com/2007/06/federal-government-contracting-customer.html>

<http://smalltofeds.blogspot.com/2006/12/marketing-small-business-in-federal-17.html>

<http://smalltofeds.blogspot.com/2007/03/small-business-federal-government.html>

<http://smalltofeds.blogspot.com/2008/03/establishing-far-and-cas-compliant.html>

<http://smalltofeds.blogspot.com/2008/07/small-business-government-contracting.html>

Prime Contractors

Regarding larger government contracting corporations to whom you could subcontract - cover the waterfront. Find out what they are bidding and aggressively market a piece of the action as a small business. Determine the locations for the largest government contractors nearest you and register at their supplier business sites. Everything they buy for their facilities, their personnel and their operations counts toward the small business goals required contractually of them by their enormous government contracts.

Research their web sites and locate their small business liaison officers. Make appointments and visit them. While visiting, seek the names and titles of managers internal to their companies who manage prime contracts involving expertise your business can supply. Go after those managers.

Summary

Small business federal government contracting is different from the commercial marketplace in terms of business system requirements, marketing, teaming relationships, pricing and the duration of associated contracts. The topics in this discussion may assist you in your decision whether or not to include the federal market in your business plan.

3. IS IT TOO COSTLY TO DO BUSINESS WITH THE GOVERNMENT?

A recent question on the business social networking site, "Linked In" caught our attention.

Our reply is published below for those who may be interested in the cost aspects of entering the government contracting venue.

QUESTION:

"Is it too costly to do business with the Government? \$89,000 per year and 19 1/2 months on average to win first government contract according to Amex Study . . . is it worthwhile to pursue government contracts?"

ANSWER:

If it was too costly to do business with the government, 302,315 companies and some of the largest corporations in the world would not be involved in it. See the below link to contract awards and amounts in 2010 to large enterprises:

<http://www.usaspending.gov/explore?carryfilters=on>

Top 10 Contractors FY 2010

1. LOCKHEED MARTIN CORPORATION -	\$34,288,619,722
2. THE BOEING COMPANY	19,358,512,809
3. NORTHROP GRUMMAN CORPORATION	15,472,742,729
4. GENERAL DYNAMICS CORPORATION	14,903,216,900
5. RAYTHEON COMPANY	14,880,453,061
6. L-3 COMMUNICATIONS HOLDINGS, INC.	7,629,644,919
7. UNITED TECHNOLOGIES CORPORATION	7,330,023,190
8. OSHKOSH CORPORATION	7,197,520,183
9. SAIC, INC.	6,595,330,339
10. BAE SYSTEMS PLC	6,587,705,335

23% of the above amounts that are bought by the large business must be awarded by the larger businesses to small companies under Federal Acquisition Regulations and large businesses must submit regular data to prove they have met their annual small business contracting goals.

Among the pool of small, small veteran-owned, small minority-owned, HUB Zone and small women owned businesses we have assisted over the last 15 years there have been many who have developed a sound approach to entering the field and managed the expenses quite well.

These enterprises have a good commercial services practice or product which they continue in a commercial cost center of the company. They establish a government contracting cost center and seek teaming arrangements with industry partners and long term government contracts.

They recognize that except for certain unallowable expense items, much of the operating expenses for government contracting can be included in the prices charged to the government and that as a small enterprise they can bill progress payments as often as twice a month.

The benefits in cash flow and stability are obvious once underway.

For more details at a free web site through SCORE assisting companies to enter government contracting, please the below link:

<http://www.smalltofeds.com/2009/01/should-you-consider-small-business.html>

For a recent grants and teaming program recently announced by the SBA and a new set aside program for woman-owned business please see the below links:

http://www.linkedin.com/share?viewLink=&sid=s226060018&url=http%3A%2F%2Finkd.in%2FdXKMrH&urlhash=wzYg&uid=5430737913883136000&trk=NUS_UNIU_SHARE-Ink

<http://www.sba.gov/content/contracting-opportunities-women-owned-small-businesses>
<http://www.sba.gov/content/contracting-opportunities-women-owned-small-businesses>

4. SMALL BUSINESS SET-ASIDE DESIGNATIONS

There are 7 major, small business set-aside designations in federal government contracting. Below is a listing of these designations, divided into two groups, Self-Certifying at the Central Contractor Registration (CCR) and those where government certification is required.

Self Certifying:

Small Business - Established by North American Industry Classification (NAICS) Code for all categories of government business (Please download the "SBA Small Business Size Standards" at the "Box Net" Cubicle on the left margin of this web site for further information). Every federal procurement has a NAICS Code assigned to it and is registered on the below web site if it exceeds \$25k:

<http://www.fedbizopps.gov/>

Minority Business Enterprise (MBE) - Self-Certifying at CCR and a good interim designation while an 8(a) application is in process for minority-owned companies

Woman-Owned Business - Applicable to Women-Owned Businesses only

Veteran-Owned Business - Applicable to Veteran-Owned Businesses only

Disabled Veteran-Owned Business - Applicable to Disabled Veteran-Owned Businesses only

Government Certification Required

Small/Disadvantaged Business SBA 8(a) Program - Requires 2 years in business and a lengthy application process with the SBA at the following web site:

<https://sba8a.symplicity.com/applicants/guide>

Historically Under-Utilized Business (HUB) Zone Located - Pertains to small businesses located in geographic areas with a historical record of low government contracting. This designation requires application at the following HUB Zone Site Web Site:

<http://www.sba.gov/hubzone/section05b.htm>

Qualifications, Registration, Certifications And Representations

To qualify as a small business for a given solicitation an enterprise must have registered at the CCR under the applicable NAICS code for the procurement and meet the SBA eligibility size standards for that code.

A small business also certifying under items 2-5 and 6 above must have individuals qualifying for the designation with at least 51% ownership interest and an operating role in the company. 60% is recommended to avoid the appearance of a front. Silent partners and investors without qualifying status or an operating role in the firm do not count toward the designation. It is suggested that ownership interest be specified by name in the articles of incorporation with the state and by % of ownership in an operating agreement.

To qualify as a HUB Zone Enterprise the business must be located in a HUB Zone and a qualifying percentage of the members (owners or employees) of the business must also live in the applicable HUB Zone.

The CCR Registration Web site is at:

<http://www.ccr.gov/>

For instructions on registration at the CCR please see the following link:

<http://www.smalltofeds.com/2006/12/registering-your-small-business-for.html>

The Annual On-line Certifications and Representations (ORCA) form must also be completed at the following link to bid federal government jobs:

<https://orca.bpn.gov/>

Your latest ORCA Certification should be printed out, signed and included with all federal government contract proposals.

Summary

Carefully select your small business designations when preparing your business and marketing plans for federal government contracting. Keep in mind that self-certifications are verified through records checks and site visits by contracting officers, DCMAO and Source Selection Boards for federal procurements before contract awards are made.

A small business set-aside designation can be a valuable tool if adequately documented, registered, certified and prudently used for bidding work that your enterprise is capable of performing successfully.

5. CONTINUED GOVERNMENT EMPHASIS ON SERVICE-DISABLED, VETERAN-OWNED BUSINESSES

Since 2004 after a presidential mandate to contract 3% of all federal contracting dollars to service-disabled veteran-owned businesses, federal agencies have struggled to meet that goal.

Now renewed emphasis has been placed on the matter by the GSA and the Veteran's Entrepreneurship Task force (VET-Force) with the signing of an agreement under which VET-Force will use its network of veterans to expand training and information on federal opportunities for these firms.

VET-Force is composed of more than 200 organizations and affiliates -- many small businesses -- representing thousands of veterans. It was organized in 1999 to lobby for the Veterans' Entrepreneurship and Small Business Development Act, which became law, and provide assistance to veterans who are starting businesses.

"GSA welcomes the opportunity to work with the VET-Force and other organizations committed to helping veterans and service-disabled veterans who are entrepreneurs," said GSA acting Administrator David Bibb. "This is a point of honor, but it is also a point of common sense. When we expand economic opportunities for veterans, we're drawing on men and women who know teamwork, discipline, cooperation and mission accomplishment."

In fiscal 2007, GSA spent 2.2 percent of its procurement dollars on businesses owned by service-disabled veterans. In announcing the agreement, officials said preliminary data for the third quarter of fiscal 2008 shows GSA has increased that figure to 3.2 percent, surpassing the statutory goal. The agreement was part of GSA's 21 Gun Salute initiative, led by the agency's chief of staff, John Phelps. GSA works with other agencies, veterans and industry to meet the 3 percent spending target. GSA also drew up the first government-wide acquisition contract set-aside exclusively for small businesses owned by service-disabled veterans.

The Veterans Technology Services GWAC, through which agencies can procure systems operations and maintenance and engineering services, was the first contract vehicle reserved for service-disabled veterans. The contract was awarded in 2006 to 44 businesses and has a \$5 billion ceiling. Veteran's can obtain assistance in the details of entering federal government contracting at:

<http://smalltofeds.blogspot.com/2006/12/registering-your-small-business-for.html>

For additional information on the disabled veteran's contracting initiatives please see the following link:

http://www.nextgov.com/nextgov/ng_20080820_3219.php?

6. REGISTERING FOR FEDERAL GOVERNMENT CONTRACTING

INTRODUCTION

You have worked hard establishing your small business in the commercial market; or you have succeeded in your profession working for large enterprises. You have established yourself and you are recognized as a success by your superiors, your peers and your subordinates. Someone or something one day attracts your attention with the suggestion that the federal government may be in the market for your skills, products or services. This article will address the path to expanding your existing business or initially undertaking a business involving federal government contracts.

There are not many products or services that the federal government does not buy and it buys them on a large scale. In the year 2005 the federal government purchased \$314 billion worth of goods and services from businesses large and small. Small businesses received a record-breaking \$79.6 billion in federal prime contracts, exceeding the statutory goal of 23 percent of the total government buys according to the Federal Procurement Data System and the SBA.

II. GETTING STARTED

The best way to explore federal government contracting possibilities is to expand your business plan to include a sector for that type of business or develop your startup plan including a federal government business sector. Doing business with the Federal Government is not "Rocket Science" but it is different. It embodies a set of regulations entitled, "The Federal Acquisition Regulation" or FAR, which contain the rules by which the government and industry abide in contracting for supplies and services. The FAR had its genesis during World War II and has evolved since that time to control and regulate the ever-expanding amounts of goods and services which the federal government buys.

The following are the most important "Mechanical Steps" necessary in positioning your business to begin selling to the federal government. They are listed in the necessary sequence for becoming a supplier entity in the government system. A link to appropriate web sites is provided at each step.

A. Dunn &Bradstreet (D&B) Number Go to Small Business Tab At:

<http://www.dnb.com/us/>

If you do not have one a D&B Number is necessary before you can complete a Central Contractor Registration (CCR) which is required for all companies who aspire to sell to the federal government. A D&B Number is also required for your Small Disadvantaged Business (SDB) application if you intend to pursue minority- owned business certification. If you are not already incorporated you may wish to incorporate before you set up your D&B number. Incorporation is fairly inexpensive these days and can be done via the WEB for either a non-profit or a for-profit business. Try search mechanisms, such as "Incorporate.com", or "Incorporate Now". It is best to do a check with the Better Business Bureau before using the results. Establishing your D&B is free.

B. For Central Contractor Registration:

<http://www.ccr.gov/>

Completing the CCR requires a D&B Number and also requires that you determine your North American Industrial Classification (NAICS) code or codes. This is a 6 digit code which classifies the products or services you supply or perform. The NAICS is utilized throughout the Federal, State and many local venues. Try to find 6 digit NAICS codes closest to the supplies or services you plan to provide. Within each 3 digit subdivision there are specific 6 digit codes and codes such as "all other" which should fit. Remember federal government agencies, the SBA and the whole national procurement system are set up on these codes. The size factor in the NAICS Code Listing is in \$M and specifies the ceiling in annual sales that small businesses cannot exceed to qualify for a given NAICS.

C. For application in the SBA Small, Disadvantaged Business (SDB) Program:

<http://sba8a.symlicity.com/applicants/guide>

If you qualify as a minority, follow the directions closely. Note there is a preview section which will acquaint you with the application and the types of information that will be necessary when you start the process.

D. For Historically Under-Utilized Business (HUB) Zone Information:

<http://map.sba.gov/hubzone/init.asp#address>

Note that Hub Zone qualification is based on where the business is located and where the personnel in the business reside as well.

E. For Searches on Federal Buys:

<http://www.fedbizopps.gov/>

FEDBIZOPS is the gateway for all federal business. The search tool there is a very powerful engine with many filters that are useful. It is well worth the time to learn the filters. Every federal agency is required by regulation to advertise there and you will be amazed at the products and services the federal government buys.

F. For an example of a small business capability statement check the following web site:

<http://www.smalltofeds.blogspot.com/2007/01/seven-management-techniques-to-assist.html>

A capability statement is always a good idea for marketing. The link above is an example. It was found on the web in the public domain. Later you will get into proposal preparation and the regulations governing the types of grants and contracts, as well as billing the government for your work and other factors.

G. Questions for you:

Are you planning to produce a deliverable, distinct, end product such as software, hardware, a commodity, a report, a conference, a survey or a study, sell it to meet the government's statement of work and bill for the end product when delivered?

OR

Are you planning to price your services at an hourly rate, sell them by labor categories with professional job descriptions to perform the government's statement of work and bill by the hour for labor and at cost for material and travel?

Answers to the above questions are key factors in how you set up your business and price your work in proposals to federal agencies. The answer to the above questions is "Yes" in both cases for some businesses. Some small businesses sell their product commercially, but contract for product implementation and support on a service contract basis.



7. GOLDEN RULES FOR SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTORS

1. Do not promise what you cannot deliver
2. Do not overextend your resources and get a reputation for poor performance.
3. Do not tell the customer what he or she wants to hear. Tell them what they need to know. They will respect you for it.
4. Network constantly on professional sites such as Linked In. Hit the "Answers" feature and accumulate an "Expert" rating from your peers in your field.
5. Blog like there is no tomorrow. A blog is quite different than a web site. Provide good, solid information free of charge and use blog searches for synergistic businesses to team with. Teaming is an absolute necessity these days.
6. Be prepared to provide information, samples and valuable service gratis as a marketing tool. Introduce yourself and then immediately engage the client with your presentation tools available to bring your expertise to whatever topic they are interested in. Let them take you where they want to go with their concerns and their needs. Apply your presentation tools and expertise dynamically on the fly in a sincere manner to those concerns and needs and you will be in demand for follow up business.
7. Quote and bill what the client can afford and grow with him (in content and resources).

8. Be dedicated to working yourself out of a job with a specific customer and having your client take over by training him. He will remember you and recommend you to 10 others.

9. Remember growth is a function of persistence and foresight. Know where your market is headed and get there first - then write and speak about your success indirectly by helping others. Demonstrate humility and a satisfaction in helping others succeed. They will find ways to give you credit. There are ways of tooting your horn without making peoples' lights go out.

10. Word of mouth advertising from pleased clients is a sure ticket to success

8. PROCUREMENT INTEGRITY AND THE LAW

FEDERAL ACQUISITION REGULATION 3.104

In dealing with government officials the small business owner must be aware of regulations regarding procurement integrity. This body of law has come into being through trial and error in dealing with conflict of interest and undue influence by industry on government officials and vice versa. The section of the Federal Acquisition Regulation dealing with these matters is 3.104, "Procurement Integrity". It is recommended reading for every small business growing into government contracting:

<http://farsite.hill.af.mil/VFFARA.HTM>

FAR Section 3.104 defines the roles of government officials in the source selection process that are subject to procurement integrity regulation. FAR Section 3.1 sets out definitions of standards of conduct, conflict of interest and specifies restrictions on gratuities to government employees (permitting virtually none). It details restrictions on dialogue regarding employment with officials prior their leaving their government jobs and further restricts where an official may work in industry and in what capacities relative to prior government service.

Penalties for violating these rules are significant and are specified in Part 3.1. They range from criminal prosecution for government and industry personnel found guilty of violations to debarment of companies and individuals from government contracting.

The rules, which define procurement integrity regarding prime and subcontractor relationships, are defined in FAR Section 3.1, under the topic heading, "Subcontractor Kickbacks".

9. ORGANIZATIONAL CONFLICTS OF INTEREST (OCI) IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

INTRODUCTION

While planning, marketing, teaming, proposing or performing under federal government programs (particularly service contracts) the small business will encounter the term, "Organizational Conflicts of Interest" or "OCI". The term has been established by the government as part of the process to control procurement integrity.

OCI clauses in solicitations and contracts require that companies certify their organizations and personnel as not having a procurement integrity issue with regard to a pending contract award or disclose what may be deemed an issue and provide mitigating factors to still be considered.

This site has discussed procurement integrity and the law at the following article:

<http://www.smalltofeds.com/2007/08/procurement-integrity-and-law.html>

Meeting OCI requirements involves strategic planning to avoid situations where your company, your management and/or your personnel are placed in potentially compromising positions while government contracting in your industry.

An apparent win can be delayed indefinitely by a competitor protest claiming OCI. Government actions after the fact if an OCI violation is uncovered will be annotated to a contractor's past performance history and in severe cases result in disbarment from government contracting.

This article will define Organizational Conflict of Interest (OCI), discuss situations under which OCI issue are likely to occur and recommend strategic planning and processes to manage the requirement.

DEFINITION

The term "organizational conflicts of interest" means that a relationship or situation exists whereby an offer or a contractor has past, present, or currently planned interests that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under the forth-

EXAMPLES

1. Competing for a management/services contract that might require the contracting company to evaluate its own or its competitors' products for use by the government
2. Competing to supply products/services for which you have designed the specifications
3. Access to other companies' proprietary information that has not been authorized for use in landing/performing the contract
4. Access to other companies' proprietary information obtained by leveraging the contract in question, which might provide an unfair competitive advantage.

The below article in the Washington Post addresses an apparent blatant example of OCI:

<http://www.washingtonpost.com/wp-dyn/content/article/2009/07/09/AR2009070902927.html>

TYPICAL OCI REPRESENTATION AND DISCLOSURE

Below are examples of typical representation certifications and disclosure statements required by OCI regulations. For a given procurement either the Representation or the Disclosure is submitted - not both:

OCI REPRESENTATION STATEMENT

*I hereby certify (or as a representative of my organization, I hereby certify) that, to the best of my knowledge and belief, no facts exist relevant to any past, present or currently planned interest or activity (financial, contractual, personal, organizational or otherwise) which relate to the proposed work; and bear on whether I have (or the organization has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice; or (2) being given an unfair**competitive advantage.*

Signature: Date:

Name : Organization:

Title :

OCI DISCLOSURE STATEMENT

*I hereby certify (or as a representative of my organization, I hereby certify) that, to the best of my knowledge and belief, all relevant facts--concerning past, present or currently planned interests or activities (financial, contractual, organizational or otherwise) which relate to the proposed work and bear on whether I have (or the organization has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given and un-fair**competitive advantage--are fully disclosed on the attached page(s) and formatted to show:*

o For ease of presentation, divide following data into four parts: Organizational, contractual, financial, other;

o The company, agency, organization in which you have a past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise);

o A brief description of relationship;

o A period of relationship;

o The extent of relationship (e.g., value of financial interest of work; percent of total holdings, total work, etc.).

Signature:

Date:

*** An unfair competitive advantage does not include the normal flow of benefits from the performance of the contract.*

STRATEGIC MANAGEMENT FACTORS

When considering the implications of OCI, examine your strategic plan for the following factors:

1. Examine your market niche and what aspects of it would be subject to OCI as a function of your company role in it or the roles of past and future personnel and suppliers or prime contractors.

2. If you are considering becoming a SETA contractor determine what portion of the market in your industry will be unavailable to you in that role. Systems Engineering and Technical Assistance (SETA) contractors are civilian employees or government contractors who are contracted to assist the government (In some areas of DOD, the acronym SETA refers to "Systems Engineering and Technical Assessment" contractors; also refers to "Systems Engineering and Technical Analysis.") SETA contractors provide analysis and engineering services in a consulting capacity, working closely with the government's own staff members. SETA contractors provide the flexibility and quick availability of expertise without the expense and commitment of sustaining a government staff long-term.

3. Bear in mind that non-disclosure agreements and OCI requirements for major programs have long term implications and expiration dates.
4. Keep in mind that subcontractor and prime contractor relationships also bear on OCI. Vet your prospective teaming companies and suppliers carefully with regard to the OCI impact they may have on ventures you undertake and flow the requirement down to them in the early stages of any teaming agreement with them.
5. Carefully consider the following guidance from FAR Part 9.505:

“Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor’s judgment; and

(b) Preventing unfair competitive advantage. In addition to the other situations described in this sub-part, an unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses — Proprietary information that was obtained from a Government official without proper authorization; or Source selection information (as defined in 2.101) that is relevant to the contract but is not available to all competitors, and such information as would assist that contractor in obtaining the contract.”

CONCLUSION AND RECOMMENDATIONS

If a potential for a conflict of interest is real, it is best to make that fact a principal factor in your bid/no bid decision. If you feel the risk could be mitigated and an effective OCI management plan could be submitted as part of your proposal to the government then carefully establish how such practical matters as firewalls, OCI certifications and clearances at the individual worker level will be handled.

Keep careful records of all written certifications and commitments in the form of NDA's, Teaming Agreements and OCI Certifications and Disclosures. Review them on a regular basis for renewal, expiration and in connection with bid/no bid decisions. Be open and honest in your presentation of the facts to the government. Your past performance rating will take a major hit if OCI is uncovered after award and you have not made full and open disclosure previously.

10. CUSTOMER RELATIONS

During a federal government contract proposal you will come to know the Procurement Contracting Officer (PCO) assigned to the solicitation that runs the source selection process. Prime contractors have equivalent individuals, usually called, "Subcontract Administrators" or "Subcontract Managers". Behind the PCO is the agency source selection board made up of the end user and other experts in the government agency. In prime contractor organizations these individuals are usually known as "Program Managers". It is not uncommon for a different PCO to be assigned to the contract once it is awarded. The government seems to evolve specialists in the ranks of procurement officials; some specialize in solicitations and source selections while others tend to be in charge of negotiating and running contracts once the winner is determined. PCO's also have staff assistants, cost analysts and procurement specialists who support them. These personnel may interface with you on fact finding, quality and technical matters. Procurement Contracting Officers (PCO's) hold warrants to represent the federal government. PCO's must have internal approval of a contract within their respective agencies before they can sign it on behalf of the agency. Only a PCO is authorized to officially commit the government. Only a subcontract administrator or manager is authorized to commit a prime contractor.

DEFENSE CONTRACT MANAGEMENT AREA OFFICE (DCMAO) AND ADMINISTRATIVE CONTRACTING OFFICER (ACO)

As you begin government contracting you may encounter a DCMAO site survey team interested in establishing the physical presence of a new supplier, the technical capability and the human resources to perform the prospective work and the quality of the environment in which the effort will be performed. A "Pre-award Survey of Prospective Contractor" Form is completed and becomes part of the contract file. This will hold true as well if you are a subcontractor to a prime. Select the person who will meet with the government survey team. This person should be empowered to speak for the company and should be completely familiar with details of the solicitation and of your company's offer. If relevant, make available one or more technicians to answer questions. Identify any disparities that may exist between the solicitation and your company's offer that should be resolved during the initial meeting with the survey team. Think about how you can demonstrate actual technical capability or the development of technical capability on the proposed contract. Make sure your plant facilities and equipment are available and operable. If they are not, be prepared to demonstrate that they can be developed or acquired in time to meet proposed contract requirements. Make sure that your labor resources have the proper skills or that personnel with the needed skills can be hired expeditiously. Gather and make available to the survey team documentation, such as previous government contracts or subcontracts or commercial orders, to demonstrate a past satisfactory performance record with regard to delivery, quality a

Gather financial documentation for the team financial analyst, including the company's current profit and loss summary, balance sheet, cash flow chart and other pertinent financial information. Make sure the plans are in place for vendor supplies and materials or subcontracts to assure that the final delivery schedule can be met. Make sure that these plans are verifiable. Review any technical data and publications that may be required under the proposed contract and make sure you understand them. If the contract is a type other than a firm-fixed price or if you have requested progress payments, prepare adequate accounting documentation for review. Review your quality control program and make sure that it is workable and consistent with the quality requirements stated in the contract.

For smaller contracts a PCO may delegate his authority to an Administrative Contracting Officer (ACO). This often occurs in larger industrial plants where the ACO is resident in the facility or in remote locations where the ACO is a member of the Defense Contract Management Area Office (DCMAO) in the city where the contract is being performed. ACO's run coordinative functions in geographically dispersed offices representing the government and coordinating inspection and acceptance functions, site surveys and related matters on behalf of the PCO. As you grow into the government contracting business you will find yourself interfacing more frequently with the DCMAO ACO nearest your location on functions various PCO's delegate or request be performed supporting contracts their agencies hold with your company. With appropriate delegation of authority from the PCO, an ACO can sign contracts and contact amendments on behalf of the government.

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

The PCO typically has an end user for the product or service who will become the Contracting Officer's Technical Representative (COTR) when the contract is awarded. As discussed above, the prime contractor equivalent position is a Program Manager. The COTR has a strong influence on negotiations and contract performance as well as payment approval. Your COTR is the real internal customer at the agency. He has fiscal, technical and schedule responsibilities to his management for the program you are servicing. However, he cannot sign for the government. The PCO has the agency warrant for that function and knows the most about public law and the Federal Acquisition Regulation (FAR) as it is applied to contracts the agency undertakes. It is the COTR who is likely feeding the PCO requests for fact-finding data during a proposal and it is the COTR with whom you will interface the most in terms of product acceptance or performance of services. Keep in mind that the COTR and the PCO will approve your deliveries, along with quality assurance inspectors for the government. A satisfied PCO and COTR mean expeditious billing approval and payment by the government. It can be generally stated that if the COTR is unhappy with contract technical performance the PCO will be unhappy as well. They are co-equals organizationally within an agency. A COTR has program executive management authority regarding decision making options. A PCO is a staff role with signature authority to promulgate decisions, once they have passed inter-agency legal and management reviews.

There are two important aspects of dealing with a COTR: He or she is your most important government customer technically.

He or she does not have the authority to commit the government on contract changes in work scope, schedule, pricing or terms and conditions. Taking contract direction from a COTR and performing outside the scope of an existing contract without official sign-off on a contract amendment by a PCO is very high risk.

PURCHASING AGENTS

For micro-purchases under \$2,500 you may find yourself dealing with government personnel who are granted purchasing authority without being designated a PCO or an ACO. In most cases these officials are COTR's and are seeking to utilize a government-wide purchasing credit card. If any doubt exists about their authority to commit the government on a transaction, it is always a good idea to ask for their PCO or ACO contact information for verification of the transaction.

DEFENSE CONTRACT AUDIT AGENCY (DCAA)

The Request for Proposal (RFP) to which you responded may have ordered a copy of your proposal be submitted to the Defense Contract Audit Agency DCAA Office nearest your location. If you are a new supplier to the government, DCAA may ask for a copy of your long-range plan containing your direct and indirect rate structure. They will verify the rates utilized in your proposal against your LRP, evaluate escalation factors utilized for long term projects and check the math. The auditor will ask for copies of major material and travel quotations and insure that government per diem rates are utilized for lodging and meals in the cost proposal. DCAA may also visit your facility and complete a "Pre-award Survey of Prospective Contractor Accounting System" form. The survey checks compliance with Cost Accounting Standards 401 and 402 to insure that the company sets up each new government contract on job cost accounting in the identical manner in which it was proposed; in effect identifying direct labor, direct material and other direct costs to each contract monthly and allocating overhead and G&A utilizing the same numerator and denominator relationships upon which the contract was originally estimated.

DCAA is paid by PCO's to perform audits. The audit does not extend to negotiations and at the audit conclusion the auditor files a report with the PCO. The report will contain information on any errors uncovered and findings on the adequacy of the accounting and long range planning systems. DCAA will not express an opinion on the cost content of the proposal in terms of a value judgment regarding prices for prospective supplies and services. If the auditor does not offer an exit interview, ask for one. Better yet, ask for a copy of the audit report to the PCO. Many DCAA offices will provide a copy to audited contractors. DCAA does not have the authority to direct a proposal revision based on audit findings. An astute contractor will immediately correct any errors found by the auditor in the proposal and examine other audit findings in preparation for negotiations.

DCAA is also involved in rate approvals on an ongoing basis. When you elect to change your forward pricing rates DCAA will perform and audit of the reasons for the changes and inform the PCO and ACO of the results. DCAA also gets involved in auditing progress billings and incurred cost submissions in support of contract closeout documentation. GSA officials involve DCAA in auditing schedule application proposals and associated escalation factors for multiple year awards.

11. PROTECTING INTELLECTUAL AND PROPRIETARY DATA

Contractual relationships established directly with the US government or under sub-contracts and purchase orders under government contracts with other companies must contain provisions for the protection of intellectual property and proprietary data. This article will address the major processes by which that protection is achieved.

RIGHTS IN TECHNICAL DATA AND SOFTWARE

The Defense Federal Acquisition Regulation (DFAR) contains the most widely used provisions by a federal agency that allow a contractor, subcontractor or supplier under government contracts to assert ownership or protective rights for specific technical data and software. Keep in mind that the more a company has invested in a technology, a product or a system the higher the level of protection available under the DFAR. If the government has or will invest in the technical data and software then the level of protection that can be asserted diminishes and the government begins to assume ownership and attendant control of the related intellectual property.

It is important during the solicitation and proposal stage to assert rights in technical data and software so the business relationship is clearly understood by all parties and appropriate protective markings, licensing and related measures can be covered in the contractual documentation. The following information in the DFAR should be studied to ascertain how to appropriately assert rights during proposals to the government and to prime contractors:

http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm

http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_72.htm

The government does not sign agreements to protect specific data, abiding instead by the DFAR-specified assertions regarding ownership and use of technical data and computer software as they are negotiated in contracts. The government will comply with specific marking and identification of proprietary data. Details on these markings are provided at the conclusion of this article.

NON-DISCLOSURE AGREEMENTS BETWEEN COMPANIES

When two companies begin an exchange of information that may lead to a mutually exclusive business arrangement under a government contract, a Non-Disclosure Agreement (NDA) is generally signed to protect proprietary data.

This document may be obtained free of charge by downloading it at the "Box Net" cubicle in the left margin of the following site:

<http://www.smalltofeds.>

TEAMING AGREEMENTS BETWEEN COMPANIES

When two companies agree to form a mutually exclusive agreement to prepare a proposal as a team to a government agency a teaming agreement is generally executed. The first page of such an agreement is on the right in the illustration above. The entire document may be obtained free of charge by downloading it at the "Box Net" cubicle in the left margin of the following site:

<http://www.smalltofeds.com>

A teaming agreement remains in force until it is replaced by a subcontract from the lead company to the following company upon award of the prime contract. In the case of a joint venture, the prime contract award results in two contracts from the joint venture contract level to the respective participating company levels.

PROTECTING RATE INFORMATION BETWEEN COMPANIES

It is generally recognized by all industries participating in federal government contracting that internal overhead and G&A rates and the data that support them are proprietary data. The reason for the proprietary nature of rate data between companies is that in government work firms are teaming with each other exclusively on one project and competing against each other on additional contracts or projects at the same time.

Assuming everyone pays a generally similar labor rate on the market to retain employees and that fringe costs about the same for everyone, then overhead and G&A are what wins and loses jobs and specific, company internal overhead rates are very closely held.

Companies do not disclose the details of their rates to other companies and they do not expect to see another company's proprietary rate information. So companies view each other's rate information on a fully loaded basis, meaning the total of the base cost, any proprietary indirect cost and an agreed upon profit percent.

If a prime contractor requests that subcontractor proprietary rate information be supplied with a proposal the detail should be double wrapped and the package stamped, 'Government Eyes Only'. The prime will then hand the package off to DCAA without opening it and receive only the fully loaded result of the burdened rate pricing.

DCAA or federal agency pricing analysts perform detail audits of subcontractor rate information but prime contractors are not provided the result. An audit statement by the government that the subcontractor detail rate support is acceptable or not acceptable is all that is provided to the prime contractor. Government auditors do not make value judgments or negotiate; they review the logic and support for rates, check the math and provide a report to the government contracting officer who will conduct the negotiations, if any.

PROTECTIVE MARKINGS FOR PROPRIETARY DATA SUBMITTED TO THE GOVERNMENT AND TO A PRIME CONTRACTOR

Your proposal data may contain rate information, proprietary data or strategic technical solutions that you would not want to fall into the hands of a competitor. The government does not sign Proprietary Data Agreements (PDA's). Examples of the government's obligation to protect your information are covered under the DFAR rights in technical data and software assertions discussed above and in the following FAR clause that requires protective markings by you on the title page of your document and on each subsequent page. FAR 15.509 Limited use of data:

(a) A proposal may include data that the offeror does not want disclosed for any purpose other than evaluation. If the offeror wishes to restrict the proposal, the title page must be marked with the following legend:

"The data in this proposal shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; provided, that if a contract is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction."

(b) The offeror shall also mark each restricted sheet with the following legend:

"Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal."

(c) The coordinating office shall return to the offeror any unsolicited proposal marked with a legend different from that provided in 15.509(a). The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

12 ACQUISITION CATEGORIES

The federal government generally recognizes 6 principal categories of acquisitions. Below is an extract from the FAR for each. It is possible for a product to go through, or be supported by, all 6 acquisition categories during its life cycle.

FAR 34.005-3 - CONCEPT EXPLORATIONS

Whenever practicable, contracts to be performed during the concept exploration phase are for relatively short periods, at planned dollar levels. These contracts are to refine the proposed concept and to reduce the concept's technical uncertainties. The scope of work for this phase of the program is consistent with the government's planned budget for the phase. Follow-on contracts for such tasks in the exploration phase are awarded as long as the concept approach remains promising, the contractor's progress is acceptable, and it is economically practicable to do so.

FAR 34.005-4 - DEMONSTRATIONS

Whenever practicable, contracts for the demonstration phase provide for contractors to submit, by the end of the phase, priced proposals, totally funded by the government, for full-scale development. The contracting officer provides contractors with operational test conditions, performance criteria, life cycle cost factors, and any other selection criteria necessary for the contractors to prepare their proposals.

FAR 34.005-5 Full - FULL SCALE DEVELOPMENTS

Whenever practicable, the full-scale development contracts provide for the contractors to submit priced proposals for production that are based on the latest quantity, schedule, and logistics requirements and other considerations that will be used in making the production decision.

FAR 34.005-6 - FULL PRODUCTION

Contracts for full production of successfully tested major systems selected from the full-scale development phase may be awarded if the agency head (a) reaffirms the mission need and program objectives and (b) grants approval to proceed with produ

FAR 35.002 - RESEARCH AND DEVLEOPMENT

The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort

for technical approaches, some of which offer little or no early assurance of full success. The contracting process is used to encourage the best sources from the scientific and industrial community to become involved in the program and must provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden.

Contracts are used only when the principal purpose is the acquisition of supplies or services for the direct benefit or use of the federal government. Grants or cooperative agreements are used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

FAR 37.1 - SERVICES

"Nonpersonal services contract" means a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

"Personal Services Contract" means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees.

"Service Contract" means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

- (a) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment
- (b) Routine recurring maintenance of real property
- (c) Housekeeping and base services.
- (d) Advisory and assistance services
- (e) Operation of Government-owned equipment facilities, and systems
- (f) Communications services

13. FEDERAL GOVERNMENT CONTRACT TYPES

In contracting for supplies and services the federal government utilizes several different contract types. The nature of these contract vehicles has evolved over a period of years based on the government's experience in the acquisition types discussed in the January 2008 posting to this blog.

At the heart of selecting the contract type is an analysis of risk involved to the contractor and administrative burden to both the government and the supplier.

Firm, Fixed Price contracting under FAR Part 12, "Commercial Contracting" is by far the most simple form of government contract because the contractor assumes all the risk and the price is fixed, regardless of cost incurred to the supplier.

Other acquisition types, such as new technology development or service contracts in a war zone where the scope of work is unpredictable and subject to change, gravitate to cost plus or time and material contract types. These contracts pose a lower risk to the supplier but also entail considerable audit and systems support costs in both government and contractor business operations.

The following is an extract from the Federal Acquisition (FAR) describing the major contract types utilized by the federal government:

FAR 16.202 - FIRM FIXED PRICE CONTRACTS

16.202-1 -- Description.

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

16.202-2 Application

A firm-fixed-price contract is suitable for acquiring commercial items or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when the contracting officer can establish fair and reasonable prices at the outset, such as when -

- (a) There is adequate price competition;
- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;
- (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- (d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

FAR 16.203 - FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENT

16.203-1 -- Description

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:

- (1) Adjustments based on established prices - These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.
- (2) Adjustments based on actual costs of labor or material - These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.
- (3) Adjustments based on cost indexes of labor or material - These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

The contracting officer may use a fixed-price contract with economic price adjustment in conjunction with an award-fee incentive and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

16.203-2 -- Application

A fixed-price contract with economic price adjustment may be used when:

- (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance
- (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control.

In establishing the base level from which adjustment will be made, the contracting officer ensures that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.

In contracts that do not require submission of cost or pricing data, the contracting officer obtains adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

FAR 16.204 - FIXED-PRICE INCENTIVE CONTRACTS

A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset.

A fixed-price incentive contract is appropriate when

- (1) A firm-fixed-price contract is not suitable.
- (2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance.
- (3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

FAR 16.205 -- FIXED - PRICE CONTRACTS WITH PROSPECTIVE PRICE REDETERMINATION

16.205-1 -Description

A fixed-price contract with prospective price redetermination provides a firm fixed price for an initial period of contract deliveries or performance and prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

16.205-2 -- Application

A fixed-price contract with prospective price redetermination is used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable firm fixed price for an initial period, but not for subsequent periods of contract performance.

The initial period is the longest period for which it is possible to negotiate a fair and reasonable firm fixed price. Each subsequent pricing period is at least 12 months. The contract may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. This ceiling price provides for assumption of a reasonable proportion of the risk by the contractor and, once estab-

lished, may be adjusted only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

FAR 16.206 - FIXED-CEILING-PRICE CONTRACTS WITH RETROACTIVE PRICE REDETERMINATION

16.206-1 -- Description

A fixed-ceiling-price contract with retroactive price redetermination provides for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract.

16.206-2 -- Application

A fixed-ceiling-price contract with retroactive price redetermination is appropriate for research and development contracts estimated at \$100,000 or less when it is established at the outset that a fair and reasonable firm fixed price cannot be negotiated and that the amount involved and short performance period make the use of any other fixed-price contract type impracticable.

(a) A ceiling price is negotiated for the contract at a level that reflects a reasonable sharing of risk by the contractor. The established ceiling price may be adjusted only if required by the operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(b) The contract is awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.

(c) Since this contract type provides the contractor no cost control incentive except the ceiling price, the contracting officer makes clear to the contractor during discussion before award that the contractor's management effectiveness and ingenuity will be considered in retroactively redetermining the price.

FAR 16.207 - FIRM-FIXED PRICE, LEVEL OF EFFORT TERM CONTRACTS

16.207-1 -- Description.

A firm-fixed-price, level-of-effort term contract requires --

(a) The contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms; and

(b) The Government to pay the contractor a fixed dollar amount.

16.207-2 -- Application.

A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort expended rather than on the results achieved.

FAR 16.302 - COST CONTRACTS

(a) Description. A cost contract is a cost-reimbursement contract in which the contractor receives no fee.

(b) Application. A cost contract may be appropriate for research and development work, particularly with nonprofit educational institutions or other nonprofit organizations, and for facilities contracts.

FAR 16.303 - COST SHARING CONTRACTS

(a) Description. A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs.

(b) Application. A cost-sharing contract may be used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

FAR 16.304 - COST-PLUS INCENTIVE-FEE CONTRACTS

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. Cost-plus-incentive-fee contracts are covered in Subpart 16.4, Incentive Contracts.

FAR 16.305 - COST-PLUS-AWARD-FEE CONTRACTS

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of

- (a) a base amount (which may be zero) fixed at inception of the contract and
- (b) an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance.

FAR 16.306 - COST-PLUS-FIXED-FEE CONTRACTS

(a) Description. A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs.

(b) Application.

A cost-plus-fixed-fee contract is suitable for use when certain conditions are present for example --

- (i) The contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown; or
- (ii) The contract is for development and test, and using a cost-plus-incentive-fee contract is not practical.

FAR 16.403 - FIXED-PRICE INCENTIVE CONTRACTS

(a) Description. A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset.

(b) Application. A fixed-price incentive contract is appropriate when --

- (1) A firm-fixed-price contract is not suitable;
- (2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and
- (3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

FAR 16.403-1 - FIXED-PRICE INCENTIVE (FIRM TARGET) CONTRACTS

(a) Description. A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b) Application.

A fixed-price incentive (firm target) contract is appropriate when the parties can negotiate at the outset a firm target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit should reflect this responsibility.

FAR 16.403-2 - FIXED-PRICE INCENTIVE (SUCCESSIVE TARGETS) CONTRACTS

(a) Description.

(1) A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(i) An initial target cost.

(ii) An initial target profit.

(iii) An initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit. (This formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.)

(iv) The production point at which the firm target cost and firm target profit will be negotiated (usually before delivery or shop completion of the first item).

(v) A ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(2) When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

(i) They may negotiate a firm fixed price, using the firm target cost plus the firm target profit as a guide.

(ii) If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by formula, as under the fixed-price incentive (firm target) contract.

(b) Application.

A fixed-price incentive (successive targets) contract is appropriate when --

(1) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award;

(2) Sufficient information is available to permit negotiation of initial targets; and

(3) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either

(i) a firm fixed price or

(ii) firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive. This additional information is not limited to experience under the contract, itself, but may be drawn from other contracts for the same or similar items.

FAR 16.404 – FIXED-PRICE CONTRACTS WITH AWARD FEES

(a) Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts shall --

(1) Establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to that fixed price; and

(2) Provide for periodic evaluation of the contractor's performance against an award-fee plan.

(b) A solicitation contemplating award of a fixed-price contract with award fee shall not be issued unless the following conditions exist:

(1) The administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits;

(2) Procedures have been established for conducting the award-fee evaluation;

(3) The award-fee board has been established; and

(4) An individual above the level of the contracting officer approved the fixed-price-award-fee incentive.

16.405-1 - COST-PLUS-INCENTIVE-FEE CONTRACTS

(a) Description.

The cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(b) Application.

(1) A cost-plus-incentive-fee contract is appropriate for services or development and test programs when --

- (i) A cost-reimbursement contract is necessary and
 - (ii) A target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.
- (2) The contract may include technical performance incentives when it is highly probable that the required development of a major system is feasible and the Government has established its performance objectives, at least in general terms. This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical.
- (3) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract shall also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

FAR 16.405-2 - COST-PLUS AWARD FEE CONTRACTS

(a) Description.

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of

- (1) a base amount fixed at inception of the contract and
- (2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(b) Application.

- (1) The cost-plus-award-fee contract is suitable for use when --
 - (i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;
 - (ii) The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and
 - (iii) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.
- (2) The number of evaluation criteria and the requirements they represent will differ widely among contracts. The criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas.
- (3) Cost-plus-award-fee contracts shall provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its per-

formance and the areas in which improvement is expected. Partial payment of fee shall generally correspond to the evaluation periods. This makes effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

FAR 16.502 – DEFINITE –QUANTITY CONTRACTS

(a) Description.

A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(b) Application.

A definite-quantity contract may be used when it can be determined in advance that --

- (1) A definite quantity of supplies or services will be required during the contract period and
- (2) The supplies or services are regularly available or will be available after a short lead time.

FAR 16.503 – REQUIREMENTS CONTRACTS

(a) Description.

A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

(1) For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(2) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.

(b) Application.

A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the

precise quantities of supplies or services that designated Government activities will need during a definite period.

FAR 16.504 – INDEFINITE – QUANTITY CONTRACTS

(a) Description.

An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order.

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) Application.

Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

FAR16.601 -- TIME AND MATERIAL CONTRACTS

Description.

A time-and-materials contract provides for acquiring supplies or services on the basis of—

- (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
- (2) Actual cost for materials.

Application.

A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence

(1) Government surveillance. A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(2) Fixed hourly rates.

(i) The contract shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor.

(ii) For acquisitions of noncommercial items awarded without adequate price competition the contract shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(A) The contractor;

(B) Each subcontractor; and

(C) Each division, subsidiary, or affiliate of the contractor under a common control.

(iii) For contract actions that are not awarded using competitive procedures, unless exempt under paragraph (c)(2)(iv) of this section, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the contractor under a common control—

(A) Shall not include profit for the transferring organization; but

(B) May include profit for the prime contractor.

(iv) For contract actions that are not awarded using competitive procedures, the fixed

hourly rates for services that meet the definition of commercial item at 2.101 that are transferred between divisions, subsidiaries, or affiliates of the contractor under a common control may be the established catalog or market rate when—

- (A) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor of any division, subsidiary or affiliate of the contractor under a common control; and
 - (B) The contracting officer has not determined the price to be unreasonable.
- (3) Material handling costs. When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with Part 31.

16.603 - LETTER CONTRACTS

Description

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

Application

- (a) A letter contract may be used when
 - (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and
 - (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.
- (b) When a letter contract award is based on price competition, the contracting officer shall include an overall price ceiling in the letter contract.
- (c) Each letter contract shall contain a negotiated definitization schedule including
 - (1) dates for submission of the contractor's price proposal, required cost or pricing data, and, if required, make-or-buy and subcontracting plans,
 - (2) a date for the start of negotiations, and
 - (3) a target date for definitization, which shall be the earliest practicable date for definitization. The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. However, the contracting officer may, in extreme cases and according to agency procedures, authorize an additional period.
- (d) The maximum liability of the Government shall be the estimated amount necessary to cover the contractor's requirements for funds before definitization. However, it shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.

16.702 -- BASIC ORDERING AGREEMENTS

(a) Description.

A basic agreement is a written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that

(1) contains contract clauses applying to future contracts between the parties during its term and

(2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

(b) Application. A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

(1) Basic agreements shall contain --

(i) Clauses required for negotiated contracts by statute, executive order, and this regulation and

(ii) Other clauses prescribed in this regulation or agency acquisition regulations that the parties agree to include in each contract as applicable.

(2) Each basic agreement shall provide for discontinuing its future applicability upon 30 days' written notice by either party.

(3) Each basic agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement.

(4) Discontinuing or modifying a basic agreement shall not affect any prior contract incorporating the basic agreement.

(5) Contracting officers of one agency should obtain and use existing basic agreements of another agency to the maximum practical extent.

16.703 -- Basic Ordering Agreements.

(a) Description. A basic ordering agreement is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains

(1) terms and clauses applying to future contracts (orders) between the parties during its term,

(2) a description, as specific as practicable, of supplies or services to be provided, and

(3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.

(b) Application.

A basic ordering agreement may be used to expedite contracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor. Under proper circumstances, the use of these procedures can result in economies in ordering parts for equipment support by reducing administrative lead-time, inventory investment, and inventory obsolescence due to design changes.

14. INTRODUCING FEDERAL GOVERNMENT CONTRACTING INTO YOUR COMMERCIAL SMALL BUSINESS

INTRODUCTION

As a result of the current economic recession and associated government stimulus programs, many SCORE inquiries have been received from commercial firms and startups regarding entering the small business federal government contracting market. Topics relevant to the issue have been posted at this site since 2006, but a comparison has not been made between the commercial and government environments to benefit readers. The purpose of this article is to compare small business federal government contracting as opposed to selling commercial products and services. The comparison may be useful for those who are considering melding commercial and federal government business or starting an enterprise involving both venues.

WHAT FEDERAL GOVERNMENT CONTRACTING IS -- AND IS NOT

Small business federal government contracting is not rocket science - to succeed you must take what you do well in the commercial market place or what your experience leads you to believe you can plan successfully as a commercial enterprise and then apply it in a slightly different manner from a business perspective to accommodate federal government contracting requirements. Very few companies enter federal government contracting without some commercial experience and success. Very few startups entertain contracting exclusively to the federal government without commercial work to sustain operations while the more lengthy government procurement process is being pursued.

Federal government contracting is controlled by the Federal Acquisition Regulation (FAR). Bid and proposal types are driven by the nature of the supply or service being procured. No one reads the FAR cover to cover - It is a source book for when you need it. The FAR and associated regulations are taught in only a few colleges, such as the Defense Systems Acquisition University at Ft. Belvoir and the George Washington School of Government Contracting. Very few CPA's are familiar with the US Government FAR Cost Accounting Standards (CAS) and I am not aware of any questions regarding CAS on current CPA exams. In general one must grow to understand these requirements and that usually happens by doing business under them.

BUSINESS DRIVER COMPARISONS

The following are some common driving business factors and a commercial versus federal government comparison for each:

<u>Factor</u>	<u>Commercial</u>	<u>Federal</u>
Billing and Payment	Instant (Retail) Net 30 (Svc)	60 Days
Sales Cycle	Instant or 30-60 Days	90 Days - 6 Months
Classification cret	None	Confidential to Top Se-
Sales Tax	Prevailing State Rate	None
Teaming	Infrequent	Expected
Intellectual Property	Copyrights and Patents	Copyrights and Patents Rights in Technical Data/Software
Accounting Requirements	General Ledger Level	Job Cost Accounting
Set Aside Designations	None	7 Designations
Registrations	None	Central Contractor (CCR) Dunns CAGE Code
Profit Range	Could Be 30-60%	5-35%
Audits	IRS/State ISO	IRS/State DCAA/DCMA ISO
Wages Regulations	Minimum Wage	GSA Wage Rate Determinations Labor and Fringe
Cost-Plus Contracting	Infrequent	Common
Customer Property Management	Infrequent	Common
Insurance Requirements	Bid Bond	\$5M Business Liability Including Auto

<u>Factor</u>	<u>Commercial</u>	<u>Federal</u>
Services Long Term At Customer Site	Infrequent	Common
Past Performance Rating Weight	Moderate	Heavy
Financing	Down Payments	Progress Payments
Contract Duration	Usually 1 Year or Less	Frequently 1-5 Years
Catalog Pricing	Open Market	GSA Schedule

SUMMARY

The above are not all the driving factors you should consider when weighing the differences between commercial and government work, but they are some of the most significant. Becoming a government supplier may not result in the highest profit-making product/service line in your enterprise but the venue has the potential to pay the bills and be a major platform for stability and long term growth. It should not be your only endeavor but it could be a major element of your total business plan.

Please see the table of contents for this book and materials for further details and the free downloads of related materials at:

<http://www.smalltofeds.com>

15. YOUR CAPABILITY STATEMENT (CAPE) FOR SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

INTRODUCTION

Federal government contracting is all about relationship development. Marketing to influential agency personnel, industry partners, prospective team members, employees, associate contractors and others who can help you requires a hard hitting synopsis of what your firm brings to the table.

Place into a capability statement (CAPE) the specific information others need to know for a sound decision about your company qualifications. This information includes such items as a D&B Number, government registration numbers, North American Industrial Classification System (NAICS) codes and the like. These items are elected or determined when you register your company for government contracting.

KEEP IT SHORT

An electronic capability statement (CAPE) for government contracts should be short and hard-hitting. It should be 1 -2 pages and should highlight the salient points of products and offerings, personnel and qualifications.

Below are examples of two good capability statements in the public domain. The first is a services company, the second example is for a company selling off-the-shelf products.

An Innovative Company Which Prides Itself in Delivering Exceptional Service

Past Performance	
Agency (Prime)	NSWC (CACI)
Contract Title	GIS Application Phase I & II
Provided end-to-end support in development of GIS application intended to support the Commanding Officers Review. After successful completion of Phase I using ESRI technologies, we were selected to provide continued services for Phase II which involved Google Earth.	
Agency (Prime)	NAVFAC-NITC (QinetiQ/CSC)
Contract Title	Sr. ERP/GIS Specialist / Database Architect
Planned and migrated NAVFAC's 200+ databases and applications (Production, Acceptance, Test and Development) to Navy Marine Corp Intranet (NMCI) Network and ensure compliance with DISA Security Technical Information Guidelines (STIG). Provided application and database administration/migration services for GIS (RSIMS—Regional Shore Installation Management System, NIRIS—Navy Installation Restoration Information Solution), Single Platform Maximo, Primavera PrimeContract (WebCM), iFacman, Custom Applications, FIS, and Oracle Financial databases.	
Agency	USDA—RD
Contract Title	Enterprise GIS/IT
Responsible for providing complete turnkey GIS/IT application development and systems development support. 8(a) competitive, 5 Year \$15M.	

Past Performance	
Agency (Prime)	Southern CA Assoc. of Govts (Sigmamet—for Phase I) (VSolvIT—for Phase II)
Contract Title	Enterprise GIS Services/ Engineering Services
Provide implementation support for Enterprise GIS system (EGIS) supporting the SCAG mission. This project entails user requirement capture, analysis, design, and implementation of all aspects of ArcGIS server including enterprise Geodatabase. Phase 2 includes creating custom application and spearheading the GIS Steering Committee.	
Agency	US Army Corp of Engineers Los Angeles District
Contract Title	GIS Development
Provided GIS data and database development including map templates development and user requirements for custom applications. This project supports the master plan activities. Supported and facilitated interactions with various agencies for data.	
Agency	NAVFAC-GPO
Contract Title	Management Services
Provided administrative services support for the GPO.	
Agency (Prime)	CECOM New Jersey (CSC)
Contract Title	Smart Target Web Console
Analyze requirements, design, develop, test and document component integrated with central web console.	



Where Opportunity Meets Solution.

Corporate Capabilities

CAGE#: 4L5L8
 DUNS #: 624749359
 SeaPort-e : N00178-07-D-5302
 GSA PES (871): GS-10F-0109W

- Engineering Services
- Geographic Information System Services
- Database Management
- Application Development
- System Migration
- Administrative Services
- Program Management & Project Management
- Certified 8(a)/SDB/WOSB
- CA DBE, MBE, WBE
- DCAA Audited/Compliant

WOSB * Certified 8(a)/SDB * DBE * SeaPort-e * DCAA Compliant * GSA PES * Engineering Services * GIS * Technology Services *

An Innovative Company Which Prides Itself in Delivering Exceptional Service

Our Mission

To help our clients be more successful by partnering with them.

Our Core Values / Culture Aspirations

- **Respect for the individual:** Treat each person – our clients, our associates, our partners, and our vendors as we would like to be treated.
- **Integrity:** Always act with openness and honesty. This is a way of life.
- **Teamwork:** Together Everyone Achieves More.
- **Innovation:** Accept challenges as opportunities—not threats. Be solution centric vs. problem centric.
- **Quality:** Quality is not an act, it is a habit.

Our Services:

- Engineering Services
- Geographic Information System Services
- Database Management & Administration
- Programming & Application Development
- System Migration
- Administrative Services
- Program & Project Management

Clients Proudly Served:

- US Navy (NSWC, NAVFAC, NAVAIR)
- US Army (CECOM, USACE)
- USDA (RD)
- State/Local Government (SCAG)
- University (Cal Lutheran)

Range of Projects (\$):

- \$30,000 to \$14,500,000

Professional Experience

VSolvIT was founded based on two decades of experience in technology and project management—spanning across various verticals such as Geographic Information Systems, Non-Profits/Education, Government Organizations, Telecommunications, and Pharmaceuticals – enabling us to leverage best practices across industries.

Please contact us to explore how we can expedite access to technical services.

Business Partners



Products Developed:

- Objective Project Evaluation
- Sustainability Tool 2.0 Web Edition (2010 GIS UC Showcase)

NAICS Description

- 541330 Engineering Services
- 541511 Custom Computer Programming Services
- 541512 Computer Systems Design Services
- 561410 Document Preparation Services
- 541611 Administrative Management and General Management Consulting Services



Where opportunity meets solution.

Woman Owned Small Business
 Certified 8(a)/SDB, DBE, MBE, WBE
 DCAA Audited /Compliant
 Secret Clearance

Web : www.VSolvIT.com
 Mail : 1160 Del Verde, Thousand Oaks, CA (DC) 8645 Westwood Center Dr., Vienna, VA (MO) 3060 Little Hills Expyway, St. Charles, MO (CA) 410 Orchard St, Fillmore, CA

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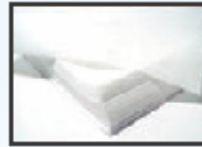
CAGE#: 4L5L8
 DUNS #: 624749359
 SeaPort-e : N00178-07-D-5302
 GSA PES (871): GS-10F-0109W

Whitepaper (Available upon request)
 • Project Portfolio Management through GIS

WOSB * Certified 8(a)/SDB * DBE * SeaPort-e * DCAA Compliant * GSA PES * Engineering Services * GIS * Technology Services *

TECHNOWIPE[®]

CAPABILITY STATEMENT



Technowipe Inc. is registered with CCR & ORCA as a **Woman Owned Small Business.**

Technowipe Inc. has been providing **Technowipe™ Lint-Free Wipes**, since 1992 to US Government Army, Naval, and Air Force Based Hospitals, as well as VA Hospitals to recently include sites in Jamaica Plains, MA., Dallas, TX., Little Rock, AR. and Loma Linda, CA.

Technowipe™ Lint-Free Wipes meets USP<797> Cleaning Guidance requiring low-lint wipes along with appropriate cleaning agents in ISO Class 5-8 areas in compounding pharmacies.

Technowipe™ Lint-Free Wipes meets MQSA Cleaning Guidance.

Technowipe™ Lint Free Wipes are:

- Manufactured in a Cleanroom specifically for medical facility use
- Cost effective and economical
- Highly absorbent
- Conveniently sized 9" x 9" (200 wipes per bag)
- Compatible with alcohol, bleach, peroxide and most solvents
- Cleanroom double bag packaging, to avoid contamination exposure and assure product integrity
- Suitable for most Class 10,000 use. In some cases, this wipe may be used in a Class 100 Environment to be determined by customer
- Excellent for picking up aqueous spills
- Made of nonwoven fiber construction for excellent strength
- Non abrasive

Technowipe™ Lint Free Wipes saturated with sterile alcohol or cleaning agent of your choice should be used to clean:

- Hoods, floors, legs and shields, ceilings, moldings, stool tops, doors, windows, carts, handles, countertops, furniture, sinks, storage bins, and walls
- Use to dry your hands in order to avoid contamination from artifacts in accordance with USP<797> Hand Washing
- Mammography/Diagnostic X-ray Cassettes
- PACS Monitors
- Phosphor Image Plates
- Equipment Surfaces

WARNING:

- Do not use wipes that are manufactured in cardboard pull-through dispensers, because it will break the wipes fibers and contaminate your work area.
- Make sure your wipes come in resealable bags, so they may be stored when not in use.

Technowipe™ Lint Free Wipes

FSC/PSC Codes:

3694	Clean Work Stations Environment Equipment
5515	Medical and Surgical Instruments, Equipment and Supplies
5525	X-ray Equipment Supplies, Medical, Dental and Veterinary
5530	Hospital Furniture, Equipment, Utensils and Supplies
5540	Ophthalmic Instruments, Equipment and Supplies
5750	Photographic Supplies
7510	Office Supplies
7920	Brooms, Brushes, Mops, and Sponges
H175	Quality Control Services/Office Supplies
H975	Other QC Services/Office Supplies

North American Industrial Classification System (NAICS) Codes:

313230	Nonwoven Fabric Mills
423450	Medical, Dental & Hospital Equipment & Supplies Merchant Wholesalers

STANDARD INDUSTRIAL CLASSIFICATION (SIC) Code:

5047	Medical, Dental & Hospital Equipment & Supplies
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DUNS 859174413

SIN 65 II #A2A

CAGE OTPV6

PRODUCT #CC555

EIN 13-366-1517

NYS Sub-Chapter S Corporation

Incorporated April 02, 1992

Visa and MasterCard Credit Cards Accepted

OWNER: Eleanor Sherman

NYS Licensed Radiologic Technologist

TECHNOWIPE Inc.

283 MURRAY AVENUE, LARCHMONT, NY 10538-1604

Telephone (914) 833-0278 • Fax (914) 833-1138 • www.technowipe.com

MAKE IT PROMOTIONAL

A good CAPE will be a promotional brochure that on paper and through the electronic media advertises who you are, what you do and why the government or prime contractors should buy from you. Major elements of your capability statement, in addition to your small business designation and certifications, are as follows:

- (1) Company overview
- (2) Supplies and services description couched utilizing your marketing ideas and strategy.
- (3) Past performance of your enterprise or your personal background and qualifications (experience, education, etc.).
- (4) Facilities or capabilities overview (How you perform your service couched in a manner that will appeal to your target market).
- (5) Explanation of the positive results the client should expect.
- (6) Points of contact and ways to contact you for meetings, placing an order and contracting your services.

INCLUDE GRAPHICS

The document itself can be created with some graphics, pictures, themes and sales pitches in MS Word or Power Point Software. "Art Explosion Publisher Pro" is an inexpensive product which is useful in creating business brochures. It offers templates and works well with photos, graphics, background, etc. A picture of your product also helps.

DISTRIBUTION

Your capability statement should be distributed on paper to your target market as a brochure, emailed as an attachment and linked into related industry web sites or partner marketing to get the word out about your product or service. Your CAPE targets contracting officers and prime contractor buyers who are seeking to fulfill their small business buying goals. It is a way to get you in the door and speak to, or correspond with, the management and technical personnel who are the decision makers in sourcing small business buys.

SUMMARY

A good quality CAPE is the spearhead of your marketing campaign and your visual image; focused and direct, it must be informative, concise and a snapshot of the very best you can offer.

16. SMALL BUSINESS GOVERNMENT GRANTS VERSUS DIRECT GOVERNMENT CONTRACTS

INTRODUCTION

Start-ups, entrepreneurs and new small businesses regularly seek information regarding small business grants. There are many misconceptions about the nature of such instruments, who qualifies for them and what constitutes a small business grant. The misunderstanding stems from advertising on the Internet and other media creating the impression that grants are readily available and that they are "Free Money".

There is no such thing as "Free" small business government grant money. In many instances individuals seeking grants should be looking to direct government contracting; this article will explain why.

DEFINITIONS

Small Business Government Grants

Small Business government grants are a type of contract and involve performance of a statement of work for agencies that are in some socio-economic endeavor serving the public, such as health care, public information, communications, high technology, or similar undertakings. A small business entity receiving a grant from a government agency becomes an extension of the agency mission and obtains funding to enhance that mission while growing as an enterprise.

Small Business Direct Contracts

Small business direct government contracting differs from grants in sheer numbers and regulatory control. Direct contracts are used by all agencies of the federal government to acquire supplies and services. Both for-profit and non-profit organizations compete in direct government contracting. A direct government contract has a very specific work scope, schedule, deliverable items, pricing and in many instances incremental funding. A grant has a more generic functional orientation to funding and may or may not include deliverable items.

There are some programs, such as Mentor/Protege and Small Business Innovative Research (SBIR) that appear to be hybrids of grants and direct government contracting and are often mistaken for grant instruments. They are not grants and are governed under the Federal Acquisition Regulation (FAR) as direct government contracts.

REGISTRATION

Guidance on registering to become eligible for both small business grants and direct contracts is at the following link:

<http://smalltofeds.blogspot.com/2006/12/registering-your-small-business-for.html>

STRUCTURE AND STRATEGIC PLANNING

Non-Profit Organizations

Most small business government grants go to non-profit organizations because of the nature of the work such entities do.

A non-profit organization operates in much the same way that a for-profit company does except that the founder (s) work for a board of directors that pays them a salary and, upon registration with state and federal governments under IRS provision 501 3 (c) or a similar designation, the business pays no taxes.

What would normally be considered profit in a for-profit company is re-invested back into a non-profit to further its work. Annual reports are required by the IRS to demonstrate the re-investment and maintain a tax-free status.

Non-profit organizations are usually initiated to pursue a religious or socio-economic endeavor serving the public, such as churches, health care, public information, communications, high technology, or similar undertakings.

No one owns a non-profit organization. A board of directors, a charter, articles of organization filed with the state and the IRS designation with the federal government establish it as a public entity. In the event it is discontinued, all proceeds and assets are distributed by the government for public use and no one individual benefits. A non-profit charter must include that provision.

The following link at NOLO provides the chronological process between a state registration and the IRS in applying for non-profit registration and tax-exempt status:

<http://www.nolo.com/article.cfm/objectID/EA3D3043-9A88-43F5-8DC869639F0F6E77/111/262/ART/>

For-Profit Organizations

A for-profit organization is founded by individuals specifically defined by name as owners in the articles of incorporation with the state and registered with the federal government for tax purposes. There are many different types of for-profit entities (S Corp, Sole Proprietorship, LLC, Partnership, etc.); each type has its own unique tax and operating characteristics.

A for-profit organization exists for the specific purpose of providing a return on investment for the owners. All assets on the books of the company are the property of the company, and although certain types of corporations, such as a Limited Liability Company (LLC) reduce the risk and insulate the owners' private assets to some degree, in general what is invested by an owner in the firm is the property of the firm and subject

to business risks and the laws governing such matters. In return the owner or stockholder is entitled to the return on his or her investment as an individual in the form of dividends, direct proceeds after costs or other forms of entitlement (conveying what is commonly known as profit).

GRANTS VS. DIRECT CONTRACTING

Small Business Grant Funding

Small Business Government Grants have the effect of supplying lump sum funding to a non-profit organization for a specific period once the grant is awarded. In general the funding is used to further the stated mission of the business. However, the grant provider may reserve the right to receive reports on how the money was spent and may require deliverable items associated with performance of the work under the grant.

Certain grants take the form of cooperative agreements, whereby the non-profit and the agency commit to supplying mutual funding amounts to a project. Under limited or special circumstances involving 0 profit, a for-profit entity may be eligible for such a cooperative agreement with the federal government.

Federal Government grant regulations are at the following link:

http://fa.statebuy.state.gov/content.asp?content_id=120&menu_id=66

Web sites for researching federal grants as well as additional information on grants in general are at the following sites:

<http://www.grants.gov/>

<http://www.proposalwriter.com/grants.html#Grant%20Resources>

Small Business Direct Contract Funding

Federal Government direct contracting regulations are at:

<https://www.acquisition.gov/far/>

“Small to Feds”, the web site you are reading, was initiated to assist small businesses in understanding the above regulation and direct federal government contracting. Please see the table of contents in the left margin of this site for topics.

As stated in the introduction above, both for-profit and non-profit entities compete for direct federal contracting. A non-profit entity will bid grants and direct contracts at 0 profit. The following links are suggested as an introduction to direct federal government contracting:

<http://www.smalltofeds.com/2009/10/introducing-federal-government.html>

<http://www.smalltofeds.com/2009/06/federal-government-contracting-small.html>

<http://www.smalltofeds.com/2009/01/should-you-consider-small-business.html>

SUMMARY

This article has provided a brief (and admittedly general) overview of the difference between non-profit and for-profit business entities and the small business government grants and direct contracting available to each.

Both small business government grants and direct government contracts are highly competitive. Selecting potential agency sources and submitting winning proposals are acquired skills. For assistance in writing grant and direct contract proposals please see the following links:

<http://www.smalltofeds.com/2007/02/federal-government-contract-proposal.html>

<http://www.proposalwriter.com/>

When considering forming an enterprise, please assess in your business plan the potential of both types of entities in direct contracting or grant competitions. Go to the SBA web site that guides you through the business planning process. I suggest you follow the site presentation and note the factors to consider:

<http://www.sba.gov/smallbusinessplanner/plan/writeabusinessplan/index.html>

The following site contains samples of business plans:

http://www.bplans.com/sample_business_plans/all_plans.cfm

Look for examples in the above of both for-profit and non-profit organizations at the above link.

Ask yourself some strategic questions, such as what competition you envision and what your marketing plan will be. Addressing these questions may take some research and that is all part of the process of putting in place your plan. It is your road map for the future.

17. SELF-MARKETING TO ACHIEVE A SMALL BUSINESS SET ASIDE CONTRACT



"THE EARLY BIRD GETS THE WORM"

INTRODUCTION

Marketing is one of the greatest challenges for the small business federal government contractor. We have previously discussed the federal government marketing process at the following articles:

<http://www.smalltofeds.com/2010/11/insights-to-succeed-in-small-business.html>

http://smalltofeds.blogspot.com/2006/12/marketing-small-business-in-federal_17.html

<http://smalltofeds.blogspot.com/2007/06/federal-government-contracting-customer.html>

http://www.smalltofeds.com/2010/06/techniques-for-product-development-in_01.html

This posting will address sculpting a government contracting business opportunity to the point where it becomes a sole source or small business group-designated set aside procurement.

GENERAL CONSIDERATIONS

Small business group-designated procurements are far more frequent than sole source contract awards. Agencies must prepare special justifications for sole sourcing and those most frequently approved are for Hub Zone and Small, Disadvantaged [8(a)] firms (see table below).

Small business group designations are beneficial to firms who hold them by enhancing the probability of an award through agency restrictions on prime contractor bidding to only those who hold the group designation. Others may bid as subcontractors to the prime but the prime small business contractor must be capable of performing at least 51% of the total effort in terms of work scope, hours and dollars.

In either sole source or group-designated marketing, an agency making the buy must be convinced that sufficient capability exists in a single company or in the small business designated group community to set a contract aside. The agency must be convinced early – before a formal procurement announcement is published on FED-BIZOPPS.

Marketing to achieve a limited competition under a small business group designation or eliminate competition under a sole source contract assumes the marketing enterprise has one or more of the following federal government set-aside designations:

<u>DESIGNATION</u>	<u>TARGET</u>
Small Business	(Group Designation Set Aside Potential)
Small Woman-Owned Business	(Group Designation Set Aside Potential)
Small Veteran-Owned Business	(Group Designation Set Aside Potential)
Small Disabled Veteran-Owned Business	(Group Designation Set Aside Potential)
Small Hub Zone Business	(Sole Source & Group Designation Set Aside Potential)
Small Disadvantaged Business 8(a)	(Sole Source & Group Designation Set Aside Potential)

Federal government procurements are further classified under the SBA Small Business Size Standards in terms of North American Industrial Classification System (NAICS) Code, number of personnel and/or annual sales. To determine whether a firm qualifies for a given bid, note the NAICS for a given solicitation and download the SBA Small Business Size Standards from the second, vertical Box Net “References” Cube in the left margin of this site.

Part of the sole source or designated group set aside marketing task is to suggest to the agency the NAICS Code (hence the size standard) for a prospective procurement. Registering to bid government contracts and establish sole source and group designations may be achieved using guidance in the below articles:

<http://www.smalltofeds.com/2009/06/federal-government-contracting-small.html>

<http://www.smalltofeds.com/2006/12/registering-your-small-business-for.html>

Hub Zone and Small Disadvantaged Business 8(a) designations are lengthy certification processes. The remaining designations in the above table are self-certifying at the Central Contractor Registration (CCR) web site, but are verified by site surveys and bid vetting for each solicitation prior to contract award.

EARLY REQUIREMENT TARGETING IS THE KEY TO SUCCESS IN SET ASIDE MARKETING

Effective set aside marketing reaches the agency decision makers with technical, budget and schedule authority before a synopsis of the requirement is posted on FED-BIZOPPS.

The objective of this form of targeted marketing is to get concurrence from the government to set the program aside sole source if the company has an 8(a), or Hub Zone Certification or reserve it by one of the above group designation classes to eliminate the prospect of full and open competition involving large business.

Become known to targeted agency personnel by visiting their program offices and meeting the decision makers. Bring a capability statement:

<http://www.smalltofeds.com/2011/05/your-capability-statement-cape-for.html>

Present your qualifications openly, objectively and specific to their needs. You must determine what those needs are through market research, trade magazines, research on what they are buying on FEDBIZOPPS, as well as postings on their web site that are future-program oriented.

Subscribe to periodicals like "Washington Technology" and other trade magazines. Observe agency trends and analysis that impact your market segment. There have been set aside programs marketed by small companies through acquainting agency management and technical personnel with capabilities they were not aware existed in the small business community or fulfillment of needs they in fact did not know they had.

Pay particular attention to FEDBIZOPPS "Sources Sought" or "Requests for draft RFP Comment" on programs that have yet to be formally solicited. Obtain an appointment to present your capabilities to the decision makers (not the gate keepers). Be courteous to contracting officers but understand they are not the individuals who make source selections. Understand that once the requirement is formally published on FED-BIZOPPS the gate closes on informal visits to the customer and the competition begins in the form of proposals by competitors. It is too late at that point to set the program aside for a sole source or a small business designation if it has not occurred by the publication stage.

Cultivate teaming relationships with other firms in your industry and look for early opportunities in agencies, not only to prime a program but to bring a team of qualified contractors in lesser roles to fulfill them with you or join a team being led by a more experienced firm:

<http://www.smalltofeds.com/2009/05/small-business-teamiing-in-government.html>

Understand the small business start up past performance challenge and work to meet it:

<http://www.smalltofeds.com/2008/07/small-business-government-contracting.html>

Attend small business outreach events by agencies and prime contractors. Stay attuned to who is attending and research their needs and requirements.

Make a point to be present at bidders' conferences for existing solicitations that you may not choose to bid but which may lend insight into the agency needs and prime contractor relationships in the future.

SUMMARY

As a small business becomes known in the federal government contracting community, successful marketing of sole source or group-designated business becomes easier, but it is always a challenge due to the need for taking early action in windows of opportunity. Find those windows and communicate capabilities to the decision makers and industry team members who can help you.

If you are eligible for any of the designations discussed in this article, make small business set asides or sole source procurements key elements in your marketing plan.

18. FEDBIZOPPS - THE FEDERAL BUSINESS OPPORTUNITIES WEB SITE

INTRODUCTION

This article will provide strategic guidance on FEDBIZOPPS and factors for using it in small business marketing to government agencies and prime contractors.

A PUBLIC DOMAIN ACQUISITIONS BULLETIN BOARD

Established as the public announcement vehicle for all federal procurements over \$25K, FEDBIZOPPS is a web-based, "Public Announcement Bulletin Board" to satisfy fairness in government contracting laws mandated by US law. It is a terrific market research tool and an absolute necessity once a solicitation has gone formal to stay abreast of modifications, changes in proposal due dates, questions and answers and other necessary information that contracting officers are required to make public. The site has recently been expanded to include a special section on federal government "Recovery and Re-Investment" Contracts.

WHAT ANNOUNCEMENTS MEAN

FEDBIZOPPS is the mandated posting point for contracting officers in all federal agencies. It is also the required notification point for GSA schedule solicitations, contract award announcements of all types and other information that is required by law for communication to the public in a fair and open manner regarding federal government procurement of supplies and services. The site contains "Sources Sought" and bidders conference notices, government requests for industry comment on draft RFP's and formally published solicitations with proposal due dates. The current FEDBIZOPPS "Agency Tab" lists 122 agencies:

<https://www.fbo.gov/index?s=agency&mode=list&tab=list>

A solicitation posted at FEBIZOPPS generally means that a procurement has received funding and the contracting officer has been authorized to start the source selection process.

Often misunderstood, is that much has occurred in the way of marketing activities by companies in advance of notices formally published by the government on FED-BIZOPPS. By the time the formal, solicitation is published it is too late to market for setting a procurement aside for a small business designation if it has not already been established as such. In addition, formal solicitation publication closes the window on self-marketing by HUB Zone and 8(a) firms for set asides to them individually without competition. In short, businesses have been marketing for the requirement long before it became formally announced at FEDBIZOPPS.

Finding a solicitation that is ideal for your company for the first time on FEDBIZOPPS is excellent market research insight into what the agency publishing the requirement is buying. However, a careful bid/no bid analysis should be conducted as to whether it is prudent to go through the expense of a proposal if the opportunity has not been a new business target for your firm earlier in the game. Please see the following article on completing a bid/no bid analysis:

<http://www.smalltofeds.com/2007/02/federal-government-contract-proposal.html>

NAVIGATING THE SITE

Start by registering at FEDBIZOPPS. Many of the features available to users are not accessible without a registration. Begin some careful searches by key words into agency solicitations that could use your products and services. The FEDBIZOPPS user guide is available as a free download at the "Boxnet" cube of this web site to the immediate left of where you are now reading. Study it before you complete your registration. Be specific in your key word selections on the feature that allows direct emailing to you of announcements by agencies.

The data base is huge and it is best to move from specific key word selections to the more general with experience to avoid being inundated with meaningless solicitations. Some companies establish a separate email address for the FEDBIZOPPS mailings to keep the results out of the mainstream of other business. The mailings are totally automated so there are no marketing factors to consider in setting up such an arrangement.

As you examine the solicitations, see who has indicated an interest in bidding them among your competitors and the primes you are pursuing and then target such projects for participation by your firm either as a prime yourself or as a subcontractor. Pay particular attention to "Sources Sought", Draft RFP "Request for Industry Comments" and similar announcements that indicate an early requirement taking shape.

For active solicitations that you wish to monitor, check the "Follow" Box on FEDBIZOPPS to receive updates and announcements by email. Once the solicitation reaches the formal RFP stage and a due date for a proposal has been established, if you have decided to bid the job the "Follow" feature is especially critical.

If there is a bidders conference and you intend to bid the job, make plans to attend. When questions are solicited you may ask them but remember that your question and its associated answer will be published by the government so be careful not to educate your competition to your win strategy in the process.

You do not have to indicate you are interested in bidding the job by registering as an "Interested Vendor" in order to bid a solicitation. Some companies prefer not to advertise their bid intentions, seeking to avoid competitors modeling their firm.

A MARKET RESEARCH SOURCE

If you are new to federal government contracting and wish to determine the best market for your supplies and services, observing what a given agency is buying on FED-BIZOPPS is a key factor.

Keep in mind that the decision makers in government contracting are the technical managers and process people behind the scenes in an organization (either government agency or large company). They have the budget authority, program responsibility and accountability. These people pass their decisions on to buyers and contracting officers via signed requisitions. Buyers and contracting officers are really no more than gate keeping staff members, knowledgeable in legalities, terms and conditions and who sign on behalf of the agency or company AFTER an internal review by the executives who have technical and management responsibility.

Thus your real marketing targets are behind the gatekeepers and little is achieved by marketing to a contracting officer or buyer. This rule of thumb applies with prime contractor contracting specialists and administrators as well as government personnel. For further details on the roles of these personnel please see the following link:

<http://www.smalltofeds.com/2007/06/federal-government-contracting-customer.html>

Once again, bidding an active solicitation after it has hit FEDBIZOPPS may be too late. The idea is to use them for market research so you can target similar projects earlier in the process. Research the technologies and services in which your targeted agencies and primes are involved through trade magazines, Internet articles, web sites, employment hiring fairs and industry conferences.

Focus your marketing campaign on finding evolving projects you can use as vehicles to approach teaming partners and agencies directly with a marketing campaign geared to your capability statement. Develop a solution to the specific needs of the project and present it to gain their attention.

Your principal challenge as a small product and services provider is finding evolving programs and projects into which your capabilities fit. Once you have found such targets it is then a matter of marketing brusquely to get into the game with eye catching solutions and capabilities.

SUMMARY

When a procurement becomes public on FEDBIZOPPS it stays public, but many invisible strings behind the scenes are likely already attached to it by aggressive and talented companies who may have sculpted the requirement with the agency, assisted in writing the statement of work or influenced the structure of the specifications to favor their products and services. All this is good, competitive marketing practice in the government contracting venue, just as it is in the commercial marketplace.

Use FEDBIZOPPS as discussed here in consonance with the following teaming and marketing articles:

<http://www.smalltofeds.com/2009/05/small-business-teamiing-in-government.html>

<http://www.smalltofeds.com/2009/07/multiple-front-marketing-in-small.html>

http://www.smalltofeds.com/2006/12/marketing-small-business-in-federal_17.html

FEDBIZOPPS is an absolute necessity once you make a bid decision. It is an extensive resource prior to such decisions and if utilized prudently it can enhance your small business government contract marketing plan dramatically.

19. MARKETING IN THE FEDERAL ENVIRONMENT

I. INTRODUCTION

You have positioned your existing or start-up company for doing business with the federal government. You have acquired a D&B Number, completed your Central Contractor Registration (CCR) to include determination of your North American Industrial Classification (NAICS) Codes, applied for an SDB certification, if applicable, researched your HUB Zone status and developed an initial capability statement for marketing purposes. You are embarking on the utilization of FEDBIZOPS, the gateway for federal government agencies advertising prospective contracts on the Web. Now is the time to think through your marketing strategy and the various venues for contracting with the federal government. This article will discuss these venues and the opportunities they offer your small business.

II. WHAT TYPE OF SMALL BUSINESS ARE YOU?

A. Commercial Contracting Under FAR Part 12

Are you planning to market an existing commercial product which has been on the market, such as software, hardware, a commodity, a report, a conference, a survey or a study, sell it to meet a government specification or statement of work and bill for the end product when delivered? If you fall into this category, will your deliverables be less than \$25K on each contract or purchase order? If the answer to both questions is "Yes", you may be able to do business under Federal Acquisition Regulation (FAR) Part 12, "Commercial Contracting", which is a simplified and fast form of selling to the federal government. The vast majority of purchases by the federal government in this category are Firm Fixed Price (FFP) with a product warranty of some type. Even if your prospective contracts will exceed \$25K per contract, you may be able to sell under FAR Part 12 if your product meets the definition of commercial items specified by the government.

B. Non-Commercial Contracting

Are you planning to market your services at an hourly rate, sell them by labor categories with professional job descriptions to perform the government statement of work and bill by the hour for labor and at cost for material and travel? Or is your product or service a development effort or not readily available to customers in the commercial marketplace. If you fall into this category for either reason it is unlikely you will be contracting under FAR Part 12 and you will be pursuing long term government contracts in excess of \$25K. If that is the case, much of the remainder of the Federal Acquisition Regulation (FAR) will apply to you, together with the various contract types other than FFP which are used for efforts where the contractor and the government may share the business risk in development, implementation or production of a new product, system or service.

C. Commercial and Non-Commercial Contracting

You may decide to market under both (A) and (B) above. Some small businesses sell their product commercially, but contract for product implementation and support on a service contract basis.

If you are selling under (A) and (B) or just (B) above you should examine the remaining articles in this series to obtain sufficient detail to develop your business system in estimating, proposing, accounting and billing the government for contracts not qualifying under FAR Part 12.

III. YOUR CUSTOMER

Although all requirements in the federal government market emanate from the US Agencies there are several ways for meeting these requirements with a business arrangement that suits your small business.

A. A US Government Agency As a Customer

There are over 50 agencies or "Departments" in the Federal Government. Each of these agencies has a statutory obligation to contract from small business for over 20% of everything it buys. Contracting officers must file reports annually demonstrating they have fulfilled this requirement. Not fulfilling the requirement can put the agency annual funding in jeopardy. You have a motivated customer in federal government contracting officers and buyers.

As a prime contractor to one of these agencies your small business proposes, negotiates and contracts directly with a federal government contracting officer. You may or may not have subcontractors or suppliers. A subcontractor is a teaming partner who agrees to accept a portion of the effort under your prime contract and abide by the prime contract terms and conditions flowed down to him from you. On competitive procurements the business arrangement is usually mutually exclusive on the part of the subcontractor and your company. A supplier is a purchased finished vendor or off the shelf retailer who sells you items or components necessary to produce your product but does not accept the flow-down provisions of your prime contract other than the most general terms and conditions such as US Public Law , EEO, Tax Provisions, Warranty and the like. Supplier relationships are not usually mutually exclusive arrangements.

You may be able to fulfill the entire prime contract scope of work or meet the product specification from within your company. However, major government procurements are increasingly geared to teaming arrangements involving a prime and several subcontractors. As the prime on such a procurement you normally have the lead share of the work scope, you have a product critical to the program, you know the customer the best or a combination of these factors. Your subcontractor team members are usually not your direct competitors but are involved in lines of work that complement your business and enable the team to fulfill a scope that is larger than any single member could

undertake alone Your direct competition is most likely forming similar teaming arrangements in an attempt to win the larger jobs which can span a number of years in duration and mean good, solid cash flow for all participants.

A General Services Administration (GSA) Schedule is a pre-qualifying way to obtain business directly from all federal government agencies. The GSA performs the service of negotiating with you for multi-year pricing of labor, products and equipment, together with pre-established terms and conditions. Your schedule and terms are posted to the GSA Web Site, "GSA ADVANTAGE", and all federal agency buyers can expeditiously buy from your schedule. A GSA Schedule is normally set up for 5 years.

The GSA also sponsors and manages major Indefinite Delivery/Indefinite Quantity (IDIQ) procurements such as "Alliant" and "Alliant Small Business" for Information Technology. These contract vehicles pre-position large and small contractors and teams of contractors to accept competitive delivery orders under established terms and conditions and standardized solutions for technological areas in high demand across the federal government. An IDIQ procurement can span a period as long as 10 years.

B. A Government Prime Contractor As A Customer

Government Prime contractors who are large businesses (roughly defined by the SBA and the banking community as having over 500 employees and annual sales in excess of \$20M) and who hold federal government contracts have the same requirement as government agencies to buy at least 23% of the supplies and services in support of those contracts from small business.

Large business, under federal procurement law, must prepare and submit annual "Small Business Contracting Plans" for approval by the local Defense Contract Management Area Office (DCMAO) nearest their headquarters. These plans must include auditable statistics regarding the previous 12 month period in terms of contracting to small businesses and the goals forecast for the next year. The federal government can legally terminate a contract in a large business for not meeting small business contracting goals. Approved small business plans must accompany large business contract proposals submitted to federal government agencies. You have a motivated customer in large business subcontract managers, administrators and buyers. A small business who becomes a prime contractor does not have to meet the annual small business contracting plan requirement until it becomes a large business.

In selling to a prime contractor you propose, negotiate and subcontract with a company who holds a contract with a US government agency and in turn flows down its provisions to you. Or you sell under purchase orders on a commercial basis (FAR Part 12) to another company who holds a federal government contract.

C. Selling Via a Joint Venture

There are occasions when two companies wish to combine their respective products or

resources and form a separate entity to undertake a contract, usually a prime contract with the federal government. The marketing considerations for such a venture involve impressing the client with the resources being dedicated to the program or addressing government concerns about broadening the technology and assuring redundant capability in the industrial community. A joint venture consists of human and other resources from the participating companies. However, it stands alone as a legal entity. Joint venture agreements are difficult to craft. Protecting proprietary information, together with intellectual property is especially demanding. Dividing the contractual effort and ultimately integrating it into a final product or service is also a challenge. Complicating the scenario is the fact that the US Government reserves the right to approve joint venture agreements before a contract can be issued to the entity. One company usually assumes the lead role in the joint venture. Some joint ventures hire a joint venture administrator who is the only legal entity authorized to sign a binding document on behalf of the two companies once it has been approved by each firm through a joint venture board, with equal representation by both organizations. Administration, accounting and billing at the joint venture level is a third tier of administrative cost which must be born by both companies.

In summary, your customer in the federal market is either the government itself or a prime contractor. You will sell as a prime contractor, as a commercial supplier or as a subcontractor and on occasion you may have the need to establish a joint venture with another firm.

IV. MARKETING AVENUES

A. Small Business Certifications

Your small business designation in the Central Contractor Registration (CCR) Data Base places you in the small business set-aside market for 23% of the total goods and services the federal government buys. Within small business, there are additional self-certifications and an SBA certification to which you can apply if you qualify. The self-certifications are as follows:

- Small Woman-Owned Business
- Small Veteran-Owned Business
- Small Disabled Veteran-Owned Business

Self-certification occurs when you respond to government requests for proposals, cite your CCR number and state in your proposal certifications and representations that you are a Small Business and whether or not you are Woman-Owned, Veteran-Owned, or Disabled Veteran-Owned. Procurement contracting officers and prime contractors are responsible for verifying self-certifications. In the case of the self-certifying entity, a woman, a veteran or a disabled veteran must have a major equity share in the business and must be involved in running the business operations.

The SBA certifies Small, Disadvantaged Businesses under their "8(a) Program". The

application for this certification is available at the SBA Web Site for businesses who qualify by virtue of minority ownership and minority involvement in running the business operations. The SBA reviews, approves and grants 8(a) Certifications to small minority-owned businesses. Please see the following link:

<https://sba8a.symlicity.com/applicants/guide>

Federal agencies and prime contractors are required to set goals and contract to achieve annual objectives for each of the above certifications within the overall 23% small business contracting mandate required by statute. Procurements are regularly "set-aside" for these designations to achieve government and prime contractor annual objectives. Procurements are also set-aside for small business in general, which includes companies who may not qualify for the additional small business certifications discussed above.

B. Capability Statement

With your small business CCR registration and additional certifications, you are ready to develop your capability statement. This document will be a promotional brochure which on paper and through the electronic media advertises who you are, what you do and why the government or prime contractors should buy from you. Major elements of your capability statement in addition to your small business designation and certifications are as follows:

- (1) Company overview
- (2) Supplies and services description couched utilizing your marketing ideas and strategy.
- (3) Past performance of your enterprise or your personal background and qualifications (experience, education, etc.)
- (4) Facilities or capabilities overview (How you perform your service couched in a manner that will appeal to your target market)
- (5) Explanation of the positive results the client should expect.
- (6) Points of contact and ways to contact you for meetings, placing an order and contracting your services.

The document itself can be created with some graphics, pictures, themes and sales pitches in MS Word or Power Point Software. "Art Explosion Publisher Pro" is an inexpensive product which is useful in creating business brochures. It offers templates and works well with photos, graphics, background, etc.

The following is a link to a capabilities statement on the WEB. It is in the public domain.

<http://smalltofeds.blogspot.com/2007/01/seven-management-techniques-to-assist.html>

Your capability statement can be distributed on paper to your target market as a brochure, emailed as an attachment and linked into related industry web sites or partner web sites to get the word out about your product or service. The capability statement targets contracting officers and prime contractor buyers who are seeking to fulfill their small business buying goals. It is a way to get you in the door and speak to or correspond with the management and technical personnel who are the decision makers in sourcing small business buys.

C. Self-Marketing for SBA 8(a) Small Disadvantaged Business (SDB)'s and Historically Under-Utilized Business (HUB) Zone Contractors

If you qualify for a SDB Certification or can attest that you are located in a HUB Zone, these items can be valuable marketing tools. Presenting your capability statement to a prospective federal customer and meeting the management, technical and procurement decision makers puts you in a position to self market projects. All federal agencies and large business contracting to the federal government have to meet SDB and HUB Zone annual buying objectives. They have processes for competitive procurements. The processes are generally lengthy to comply with regulations governing solicitation on the open market, request for proposals, source selection, negotiation and award.

Under the 8(a) SDB Program and the HUB Zone Program if you can assist a federal agency or large business in identifying a product or service they need and that you are a qualified source to fill that need then the your customer can buy it directly from you and bypass the competitive process entirely. The key to achieving this type of targeted marketing is to contact and/or visit your customer regularly and get in front of the solicitation process. Once a project has gone to the "Sources Sought" or "Solicitation" stage you can still convince the customer to set it aside for 8(a) or HUB Zone firms, but you will be competing with other SDB's or HUB Zone contractors in your NAIC's Code for the business. The "Early Bird Gets the Worm", adage is useful for SDB and HUB Zone organizations. Some buying agencies even permit an 8(a) SDB or HUB Zone Contractor to assist in writing the product or performance specification for a project to expedite the process. Federal agencies and large businesses are motivated to use the non-compete, set-aside features of the 8(a) SDB and HUB Zone Programs. Doing so permits them to meet their small business procurement goals and enables a swift buying action of a product or service for which they may have a critical need. In addition, for HUB Zone contractors, a federal agency is permitted to consider a HUB Zone Contractor's proposed price 10% lower than other contractors who may have bid a comparable amount in a competitive procurement. A similar 10% advantage rule for SDB's was recently eliminated by the federal government.

D. GSA Schedules and Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts

The General Services Administration (GSA) pre-qualifies contractors with a terms and conditions package and negotiated rates for products or services. Your GSA schedule is then posted to the web at:

https://www.gsaadvantage.gov/advgsa/advantage/main/start_page.do

This site is searchable by all government agencies who want to buy products and services. A GSA schedule allows you to offer a pre-existing contract vehicle with established pricing to any federal government agency or prime contractor. This shortens the procurement process considerably. In some procurements, a GSA Schedule is necessary to qualify for bidding certain jobs. You can read more about applying for a GSA Schedule by going to the General Services Administration Web Site at:

<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-13464>

Under Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts, terms and conditions and labor hour pricing are agreed upon in advance with an agency for a period of time (usually a multi-year arrangement). Many large government agencies contract utilizing IDIQ contract vehicles and often make multiple awards to several companies who then compete for work on a delivery order basis thereafter. The GSA also manages large scale IDIQ procurements in high technology areas such as Information Technology (IT). The Alliant IDIQ program is a decade long example. It consists of two competitions with multiple awards; one to large business and one to small business against a standard for information technology development across all federal government agencies. Individual agencies then compete and procure IT products and services against the standard with established terms and conditions and known pricing. Once qualified, winning in this type of environment is simplified to submitting the best technical solution to a given delivery order with the lowest man-hours or product pricing. It is not uncommon for competitors to offer discounts during the competition.

Under both GSA Schedules and IDIQ Contracts individual delivery orders are negotiated separately regarding the labor hours, material and travel cost necessary to complete a discrete scope of work.

E. FEBBIZOPS

<http://www.fedbizopps.gov/> is the gateway for all federal acquisitions in excess of \$25K. The search tool at the site is a very powerful engine with many filters that are useful. It is well worth the time to learn the filters. Every federal agency is required by regulation to advertise at FEDBIZOPS. You may be surprised at the products and services "Uncle" buys.

F. Teaming

Because the federal government buys on such a large scale and in many acquisitions chooses to package related technologies or services, it is a necessary part of your marketing plan to consider teaming with other companies. As discussed in paragraphs II. and III., above, large businesses who are in the same line of work as you are have a requirement to subcontract to small businesses under federal government contracts. In addition, large and small companies who are in related or synergistic businesses to yours actively seek partners in the federal government market to permit access to larger packaged procurements.

Attend trade conferences, join trade organizations, get into technical blogs on the web and conduct searches in the CCR Data Base for companies whose supplies and services might compliment yours. All large businesses contracting with the government have a small business liaison officer which you can locate at the company web site. Present your capability statement electronically or preferably in person to local large businesses engaged in federal government contracts who may need your services.

Many large businesses are willing to team as a subcontractor to a small business to get access to the small business set-aside market. A large business cannot receive an amount in excess of 45% of the dollar award of a small business set-aside, but many large businesses are willing to subcontract to multiple small businesses on federal government contracts to broaden their business base.

For SDB companies, the "Mentor - Protégé" Program is available. This is a federally sponsored program whereby a large business sponsors a smaller business through active teaming and mentoring. You can learn more about this program at:

http://www.acq.osd.mil/osbp/mentor_protege/

The best way to approach a large business or another synergistic small business is to have a program target as a discussion vehicle. If you find a project for which you need a partner or partners, carefully research the firms you are considering, check their D&B's, see if they have entered their company in the "Interested Parties" frame of the solicitation at FEDBIZOPS.

When teaming with another company, most arrangements become mutually exclusive if you are subcontracting to one another and not just supplying off the shelf products. As the business relationship evolves and you begin sharing information a two way Non-Disclosure Agreement (NDA) is usually necessary to protect proprietary information.

As the business relationship matures and the parties agree to become exclusive, a teaming agreement is also necessary. At this point you have agreed upon who will be the eventual prime contractor and who will be the subcontractor. The areas regarding work share and proposal preparation are particularly critical in terms of thorough definition to avoid future misunderstandings among the parties. If and when the prime con-

tract is awarded, the teaming agreement is replaced by a subcontract from the prime party to the subcontracting team member.

G. Small Business Innovative Research Program

Another federally sponsored program is the Small Business Innovative Research (SBIR) Program for high technology small business. This is a competitive program awarding small business annual grants in critical high technology areas. You can learn more about the SBIR Program by going to:

<http://www.sba.gov/aboutsba/sbaprograms/sbir/index.html>

V. SUMMARY:

This article has offered a template of avenues for small business federal government contract marketing. You should apply the template to your business plan and explore which avenues suit your enterprise. The federal government contract customer is motivated to sell to you. Your marketing task is to target and find your customer considering the supplies and services you sell. The federal government offers competitive advantages to various types of small business, depending on ownership and size. Federal government contracts offer small purchases and long term contractual arrangements from firm fixed price purchases to cost type and time and material contracts. The opportunities are there for small business entrepreneurs' to pursue.

20. SEVEN MANAGEMENT TECHNIQUES TO ACHIEVE A CONTRACT



Company Overview

Second Nature Art and Framing is a full service art, framing and matting supplier with retail operations in Hastings and manufacturing facilities in St. Paul, Minnesota. Established in 2001, the company provides quality products and services to the Minneapolis and St. Paul metropolitan area and to large national corporations. We have met the product specifications, packaging, handling, storage, shipping and delivery requirements of major clients at multiple locations throughout the Midwest. We have factory production, logistics and support capabilities to supply the national marketplace.

We are specialists in wood frames, molding, home decor, office accessories, picture frames, framed art, prints, maps, photos, certificates, awards, mirrors, portraits, plaques, custom wood products, glass, acrylic, fabrics, mats, liners, and wood molding.

Second Nature prides itself in quality workmanship at affordable prices from custom projects to factory production meeting high volume requirements. The management and principal staff at Second Nature have over 40 years experience in project management, custom framing design, matting, layout and manufacturing production. We undertake commercial projects, government supply contracts and subcontracts for framing and matting as well as related services.

SBA SMALL BUSINESS

Second Nature is an experienced and quality source for government contracting officers and purchasing agents to meet statutory obligations requiring supplies and services procurements from small business. We actively seek teaming arrangements with other small businesses and prime contractors in the building supply, interior decorating, construction management and building rehabilitation businesses.

Supplies and Services

- Custom Frame Design
- Custom Frame Layout
- Framing Selection for Artwork, Mirrors, Certificates, Awards, Plaques and Prints
- Matting
- Interior Decorating Consulting
- Installation Services
- Volume Factory Production
- Complete Assembly
- Merchandising Consultation
- Artwork Custom Wood and Metal Working
- Shipping
- Delivery

Past Performance

Through our operations in Hastings, Minnesota, Second Nature has supplied custom framing and manufacturing services for the Minneapolis Metropolitan area for the last 5 years. Our retail store houses a full selection of contemporary interior art, metal and wood frame stock, several varieties of matting and custom design and framing services. A typical project involves a close working relationship with the customer, integrating individual decor and artistic preferences into the design process and completing the framing project to client specifications.

Second Nature Manufacturing facilities in St. Paul, Minnesota have serviced our retail outlet and large Midwest stores with high volume framed art for interior decorating since 2001.

Facilities

3000 Sq. Ft. Retail Store in Hastings, Minnesota

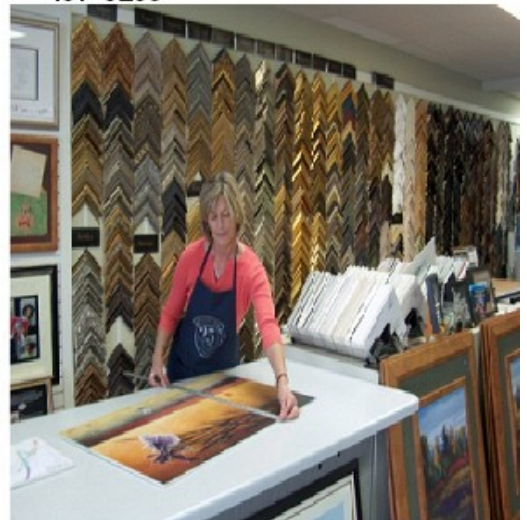
5000 Sq. Ft. Manufacturing Facility in St. Paul, Minnesota, featuring Lesome Precision Double-Cut Saw Capability for up to 6' wide molding

NAICS Codes: 442299 - All Other Home Furnishings 337211 - Wood Office Furniture Manufacturing 339999 - All Other Miscellaneous Manufacturing 423220 - Home Furnishing Merchant Wholesalers 423930 - Recyclable Material Merchant Wholesalers 424990 - Other Miscellaneous Non durable Goods Merchant Wholesalers

DUNS: 109138995

CAGE CODE: 4HSN2

CONTACT: David Muller
(651) 438-0490 FAX (651) 437-5259



**120 EAST SECOND STREET, HASTINGS, MINNESOTA 55033-1202
E-MAIL: dnm551@aol.com**

One of the biggest challenges for a small business in government contracting is achieving that first major contract. A small business entering the field does not have a government contract past performance record to include in proposals to federal agencies. At the onset, the only qualifications that can be referenced are commercial successes and the individual expertise and qualifications of the owner (s), employees and management. This article offers seven small business management techniques to assist in achieving that first government contract.

1. Contingent Hire Agreements - Recruit prospective employees and associates who have previously worked in government business. Such individuals bring expertise and qualifications with them and lend credibility to your enterprise. A contingency hire agreement is one way to approach an experienced employee with the prospect of joining your firm at a later time when the business base is there to permit professional advancement. Under such an agreement the prospective employee agrees to contribute time and effort on a proposal for a new contract and is assured on paper by your company of a position on the project when it is awarded to your firm. Such arrangements are generally recognized by the government as a credible way for new or start-up businesses to grow and agencies will accept resumes of experienced professionals in proposals from small business contractors with signed contingent hire agreements even though the personnel may not yet be on the company payroll. Prospective employees of this type are often available from the retired or downsized ranks of federal government agencies or prime contractors. Be aware that government procurement integrity regulations apply. Individuals should not be considered who have a potential conflict of interest in the project you are bidding due to a former association with the buying agency in a source selection authority role as specified in FAR Section 3.104. You can download a draft shell for a contingent hire agreement by at the Box Net cube in the left margin at the following site:

<http://www.smalltofeds.com>

2. Seek government solicitations for taking over incumbent work forces. In some cases the government designates base operations contracts, system support contracts and other service contracts at military installations or federal agency locations as small business set-asides. In certain of these contracts the services may have been performed until now by a large corporation which is no longer eligible to compete due to the small business designation of the current procurement. The employees of this large company become available for recruitment since they will lose their jobs at the location if they do not join the winning company. These individuals have built-in technical expertise on the project and government contracting backgrounds. Advertised government solicitations may be examined at the following web site:

<http://www.fedbizopps.gov/>

Utilize the filters at the above web site to search for solicitations designating Small Business, 8(a), HUB Zone, Women-owned, Veteran-owned set-asides.

3. Build government contract business system infrastructure such as estimating, pricing, proposal preparation, long-range planning and job cost accounting processes. These processes are particularly important if you do not qualify to sell under FAR Part 12, "Commercial Contracting" and you are in the services business. Having these key elements in place enables your company to bid large scale jobs consistently and to forecast, estimate and account for new government business. They also permit the company to pass site surveys and audits by DCAA and DCMAO in connection with proposals and contract awards. Having key infrastructure in place creates a favorable impression to prime contractors and other prospective teaming partners. Articles on building these processes are available from the author at:

<http://www.micromentor.org> Key Words "Federal Government Contracts"

4. Team with large business contractors who have experience in the government contracting field. As part of such teaming arrangements they may be willing to trade-off their expertise and assistance for your particular technical skills and your small business participation as a subcontractor on new contracts. Remember large government contracting businesses are required to buy 23% of their purchased supplies and ser-

vices from small business and they must develop and submit an annual small business contracting plan to the government. Failure to do so can jeopardize their current government contracts or place in danger the award of a project where a small business plan is required. You have motivated large business prospective partners available to you in the government contracting community. Protect yourself with proprietary data agreements and insure that your company's work scope for a given project is well defined in a thorough written teaming agreement. Large businesses will respect you for your professionalism when you demand a formal business approach. The Department of Defense Mentor/Protege' Program is a logical extension of the large business/small business teaming concept. Under this program, large businesses formally "adopt" a small business under a Pentagon-sponsored program, taking them through the growing process and teaming with them on new government contracts. The large business benefits from the small business statistics and can use the program in their marketing literature. The small business benefits from the expertise provided by the larger partner, as well as the exposure to larger government contracts as a subcontractor. You can read about the program at the following web site:

http://www.acq.osd.mil/osbp/mentor_protege/

5. Submit and negotiate a General Services Administration (GSA) Schedule. Pre-establishing pricing and terms and conditions with the GSA lends credibility to your enterprise. Schedule periods can last from 5-10 years and simplify buying for your prospective government customers. They can have confidence that the GSA has reviewed and determined that your rates are reasonable and they can be assured that the terms and conditions of your schedule have met the approval of the GSA. All they need to do is place a funded delivery order request for the supplies or services with the GSA against your schedule, negotiate the technical statement of work and delivery requirements with you and the deal is done. You can pursue a GSA schedule at the following web site:

<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelPage=%2Fep%2Fchannel%2F> You can also check the SBA small business goaling report at:

<http://www.sba.gov/aboutsba/sbaprograms/goals/index.html>

For further details on each of the 7 small business set aside designations please see the following link:

6. Pursue contracts which are set-aside for small business enterprises. If you are a woman-owned, minority-owned, veteran-owned or disabled veteran-owned business, seek government business solicitations which have been set aside with these designations. It is more likely that you will be competing against enterprises at that same developmental stage as your company by taking this approach.

If you are a small business with no other set-aside designations, seek teaming arrangements as a subcontractor with minority-owned, veteran-owned or women-owned businesses. Up to 45% of a project may become yours under such arrangements. Your team members will not usually be your direct competitors but will be involved in lines of work that usually complement your business and enable the team to fulfill a scope that is larger than any single member could undertake alone. Teaming arrangements can result in winning larger jobs that can span a number of years in duration and mean good, solid cash flow for all participants. Check the "Dynamic Search Mechanism" at the Central Contractor Registration (CCR) Data base below for companies in your immediate area who are in synergistic lines of work to your firm and have small business set-aside designations. Everyone in the \$79B government contracting small business community is teaming these days to get ahead:

<http://www.ccr.gov/>

7. Self-market to federal agencies with your capabilities statement and ideas for government programs. If you are a Minority-owned 8(a) or a Hub Zone-located small business, a government agency can sole source a procurement to you without competition under the Federal Acquisition Regulation (FAR). Even if you are not an 8(a) or Hub Zone firm, self-marketing has tremendous potential. There are over 50 federal government agencies with facilities, bases, locations and offices housing contracting officers and buyers all over the United States. Find the nearest locations to you via the agency search filters at FEDBIZOPS (see link at 2., above) and send them a capabilities statement with a request for a meeting with their small business liaison officer. For an example of a capability statement please see the document at the beginning of this article.

Federal agencies are required by statute to meet with you. Once you are there find out the names and contact information of their technical management authorities who define requirements for acquisitions. Determine what the agency needs through research with the technical decision makers and on the web. Most agencies forecast their long range plans at sites available to the public. Define a creative project in terms of meeting your client's needs and offer it to the agency points of contact as a prospective set-aside contract.

If you are not an 8(a) or Hub Zone Firm and the agency posts your self-marketed project for competition, you will still be in the driver's seat during the proposal stage, having developed the concept and positioned yourself well ahead of your prospective competitors in terms of a solution with your customer.

SUMMARY:

Try combining a well written business plan with an aggressive marketing campaign and the seven approaches outlined above. For assistance in business planning, please see the following links:

<http://www.sba.gov/smallbusinessplanner/plan/writeabusinessplan/index.html>

<http://www.sba.gov/library/pubs.html>

Entering government contracting as a small businesses is indeed a challenging time, but there are many opportunities awaiting you. This article has attempted to reveal some techniques to capitalize on those opportunities and win your first federal government contract.

21. MULTIPLE FRONT MARKETING

INTRODUCTION:

Your enterprise must market on several targeted government contracting fronts to be successful. Simply registering as a federal government contractor or acquiring a small business set aside designation does not mean that contracting officers will find you or that larger corporations will seek you out as a teaming partner. A GSA schedule or a multi-year IDIQ umbrella contract, purchase agreement or similar vehicle may look promising, but they are really no more than hunting licenses. The game must still be bagged (targeted sales of specific products or service projects to customers).

With the economy under duress and federal recovery funding finding its way into multiple venues across the country, the prudent small business will target agencies and teaming partners that best fit its products and services, positioning itself to acquire developing information on requirements and displaying capabilities by conveying early solutions to customer decision makers. This article will suggest techniques, approaches and tools to conduct a multi-front, targeted, requirements-driven, marketing campaign for small business federal government contracting.

SELECT YOUR SMALL BUSINESS SET ASIDE DESIGNATIONS CAREFULLY

Your small business designation by North American Industrial Classification System (NAICS) Codes should be thorough and as comprehensive as possible when you register at the Central Contractor Registration (CCR). Make sure your CCR has the maximum number of codes for which you qualify, since the whole federal procurement system rides on those codes. Insure the narrative description of your services is complete as well. Please see the following link for further information on registration:

<http://www.smalltofeds.com/2006/12/registering-your-small-business-for.html>

The sub-categories of small business set-aside certifications should be chosen carefully and based on your company ownership and specific market research into which categories the agency or prime contractor favors, what their small business contracting plan includes in the way of targets and what their track record has been in awarding contracts. Good information on awards can be gleaned from the federal web site on federal government spending at:

<http://www.usaspending.gov/>

You can also check the SBA small business goaling report at:

<http://www.sba.gov/aboutsba/sbaprograms/goals/index.html>

E. FEBBIZOPS

<http://www.fedbizopps.gov/> is the gateway for all federal acquisitions in excess of \$25K. The search tool at the site is a very powerful engine with many filters that are useful. It is well worth the time to learn the filters. Every federal agency is required by regulation to advertise at FEDBIZOPS. You may be surprised at the products and services "Uncle" buys.

F. Teaming

Because the federal government buys on such a large scale and in many acquisitions chooses to package related technologies or services, it is a necessary part of your marketing plan to consider teaming with other companies. As discussed in paragraphs II. and III., above, large businesses who are in the same line of work as you are have a requirement to subcontract to small businesses under federal government contracts. In addition, large and small companies who are in related or synergistic businesses to yours actively seek partners in the federal government market to permit access to larger packaged procurements.

Attend trade conferences, join trade organizations, get into technical blogs on the web and conduct searches in the CCR Data Base for companies whose supplies and services might compliment yours. All large businesses contracting with the government have a small business liaison officer which you can locate at the company web site. Present your capability statement electronically or preferably in person to local large businesses engaged in federal government contracts who may need your services.

Many large businesses are willing to team as a subcontractor to a small business to get access to the small business set-aside market. A large business cannot receive an amount in excess of 45% of the dollar award of a small business set-aside, but many large businesses are willing to subcontract to multiple small businesses on federal government contracts to broaden their business base.

For SDB companies, the "Mentor - Protégé" Program is available. This is a federally sponsored program whereby a large business sponsors a smaller business through active teaming and mentoring. You can learn more about this program at:

http://www.acq.osd.mil/osbp/mentor_protege/

The best way to approach a large business or another synergistic small business is to have a program target as a discussion vehicle. If you find a project for which you need a partner or partners, carefully research the firms you are considering, check their D&B's, see if they have entered their company in the "Interested Parties" frame of the solicitation at FEDBIZOPS.

the following link:

<http://www.smalltofeds.com/2009/06/federal-government-contracting-small.html>

TARGET REQUIREMENTS EARLY

Government agencies, like companies, have long range plans and budget cycles. Keep abreast with the latest developments in trade magazines and journals regarding government contracting trends within agencies to develop and market solutions for anticipated requirements.

Monitor agency web sites and forecasts. Be constantly aware of the annual federal budgeting cycle, its development progress in the executive branch and its approval status in Congress. Agencies push to commit excess funding late in the fiscal year and at the same time forecast their next year needs for submittal to higher authorities. In the 1 October to September 30 fiscal year cycle, July, August and September are prime marketing periods.

Watch FEDBIZOPPS for sources sought notifications, requests for industry comments on draft RFP's and similar early indications of programs taking shape which will later be advertised in full solicitation. Go after them early enough to market and get them set aside for your small business designation and influence the development of the project with constructive input creating a presence in the eyes of the customer and prospective teaming partners.

MAKE PRUDENT BID/NO BID DECISIONS

Develop a good fit in your bid/no bid decisions. The only thing worse than losing a contract bid is winning it and performing poorly, creating negative past performance notations on your record. Know what your company can do and cannot do. Acquire skilled personnel through contingent hire agreements or incumbent work forces as you grow and carefully choose what you bid. For information on bid/no bid decisions and proposal preparation please see the following link:

<http://www.smalltofeds.com/2007/02/federal-government-contract-proposal.html>

EXPLORE SERVICE CONTRACTING AND TEAMING

Other than FAR Part 12 Commercial Contracting for off-the-shelf items, entry into federal government contracting for small business usually occurs through service contracting direct to an agency or teaming as a subcontractor with another firm for a major program. Even for commercial products, particularly new ones on the market, the best way to introduce your solution to a customer is to become involved in a service contract supporting the client's operations.

With regard to larger government contracting corporations to whom you could subcontract, cover the waterfront. Find out what they are bidding and aggressively market a piece of the action as a small business. Find the locations for the largest government contractors nearest you and register at their supplier business sites. Everything they buy for their facilities, their personnel and their operations counts toward the small business goals required contractually of them by their enormous government contracts.

Research their web sites and locate their small business liaison officers. Make appointments and visit them. While visiting, seek the names and titles of managers internal to their companies who manage prime contracts involving expertise your business can supply. Go after those managers.

Form teaming agreements early with good industry partners and begin to develop a winning message to the customer while he is defining his program. The following article provides further details on teaming:

<http://www.smalltofeds.com/2009/05/small-business-teamiing-in-government.html>

OBTAIN A GSA SCHEDULE

The below link is an article on how to apply for and utilize a GSA schedule:

<http://smalltofeds.blogspot.com/2007/05/achieving-and-utilizing-gsa-schedule.html>

There are 3 major challenges to going through the GSA schedule application process:

1. Finding an open solicitation that fits your product line
2. Establishing a good working relationship with the GSA Contracting Officer on the schedule solicitation and getting his/her assistance in working the system expediently.
3. Presenting viable, auditable cost history on what you have previously sold your products for to pass the cost/pricing audit portion of the process.

Most companies continue to bid work to the government through FAR Part 12, Commercial Contracting procedures or other contract vehicles discussed this web site while their GSA schedule application is pending. Please examine this site for articles on

teaming, marketing, IDIQ contracts, negotiations, subcontracting and many others. Remember there are thousands of companies out there going through the system, so you will have to be patient. Very few applicants get through it in any less than 6 months. A GSA Schedule is a very valuable item to achieve, but it takes time to do so and there are other forms of government contracting you can use while your application is in process.

DEVELOP A DYNAMIC CAPABILITY STATEMENT

A capability statement (CAPE) is an absolute necessity. It contains the specific information a contracting officer needs to place an order. This information includes such items as your D&B Number, your government registration numbers, your North American Industrial Classification System (NAICS) codes and the like. These items are selected or provided by you or determined by the system when you register your company for government contracting.

Your electronic capability statement (CAPE) for government contracts should be short and hard-hitting. It should be 1 or 2 pages and should highlight the salient points of your products and offerings, your personnel and your qualifications. Please see the following link for an example of a capability statement:

<http://www.smalltofeds.com/2007/01/seven-management-techniques-to-assist.html>

WRITE RESPONSIVE PROPOSALS

Writing a winning proposal is an art form. It takes practice and the more proposals you prepare and submit the more artful you will be. You will find yourself utilizing the same materials over again on successive proposals. Management approaches, personnel profiles, win strategies and other major components of a good submission will fill your library and extend your CAPE to specific solutions for specific customers.

The following link contains guidance on writing effective proposals:

<http://www.smalltofeds.com/2007/02/federal-government-contract-proposal.html>

SUMMARY

Your reputation as a reputable performer in the small business federal government contracting community is important. Be selective and high performing. Agencies, past performance data bases and other companies will be observing you, recording your performance and passing the word along to others directly and indirectly.

Then insure your web site, your capability statement and your marketing plans are maintained current alive and dynamically reflective of your successes as you pursue new business and carefully develop your library of past performance records by project with accessible profiles to use in your government proposals.

Please see the following link on meeting the past performance requirements challenge in federal government contracting:

<http://wbx.me//?u=http%3A%2F%2Fwww.smalltofeds.com%2F2008%2F07%2Fsmall-business-government-contracting.html>

22. TEAMING IN GOVERNMENT CONTRACTING

INTRODUCTION:

While developing a government marketing plan, teaming with other companies is a productive venue for the small business. This article will convey general guidance pertinent to teaming and explore the types of teaming used successfully by small business federal government contractors.

GENERAL CONSIDERATIONS

Synergism is paramount in teaming with any size company, whether in a lead or sub-contracting role. There should be technical, management and market segment similarities between you and any company with whom you are considering teaming. Your prospective team member ideally will not be a direct competitor; rather a business in a related field with whom you share a mutual need for each other's contributions in pursuing large-scale projects.

Relationships must be developed with primes and other small businesses that can help you, team with you and keep you in mind as they search for success. That takes time, patience and open-minded, out of the box thinking. It also takes more than a Non-Disclosure Agreement (NDA), a teaming agreement (TA) and a proposal to succeed. It takes dynamic marketing and communication with strong partners and hard, innovative work. Nice buzz words you say - but it is the truth and you have to find what that truth means to you.

Successful teaming for a specific program occurs early. Very few astute teams in government contracting are formed after a solicitation is formally published on FED-BIZOPPS. Checking the "Interested Parties" block of a solicitation there and attempting to form or join a team is generally too late to effectively achieve a cohesive relationship, agreement and a win strategy by the time the proposal is due.

A size factor need not be a deterrent if you use contingent hire agreements, aspire to take over incumbent work forces in existing government operations or keep yourself open as a partner to a multiple number of primes and synergistic small businesses who are not direct competitors but with whom teaming will permit chasing larger procurements than any one small business could pursue. You can also grow into security clearances, as individuals and as a company with government agency sponsorship through already cleared companies.

In making contacts with larger firms you may have to go through the "Gate Keepers", such as the small business liaison officer, the registration boxes at web sites, a purchasing agent or a contracts person to get to the program people with the real decision making authority. Give the gate keepers their due, since you may end up working with them later.

Nothing makes a prospective small business or a large business teaming partner perk up like a real hot lead on a program. If you can offer a "Carrot on a Stick" such as an opportunity that they cannot access other than through you, it will get their attention. A non-disclosure agreement (NDA) should be signed before the discrete information on the job is disclosed. Please see the following article on NDA's and Teaming Agreements as documents and protecting your associated intellectual property:

<http://smalltofeds.blogspot.com/2008/09/protecting-intellectual-property-and.html>

SUBCONTRACTING TO ANOTHER COMPANY

In teaming as a subcontractor with other companies your goal is to sign a teaming agreement with a prime contractor for a prospective program. You prepare your proposal and submit it to the prime contractor who incorporates it into his submission to the government. Your submission contains flow down terms and conditions from the prime's proposal as well as a technical description of the effort you intend to perform. Your cost proposal to the prime contains fully loaded rates for the labor categories and material as well as the travel you will perform on the subcontract. The government awards the prime contract to your team member. You then undertake negotiations with the prime to convert your teaming agreement to a subcontract. The subcontract will replace the teaming agreement between you and your prime and contract performance can then commence.

Be especially careful in negotiating the attachment to a teaming agreement which identifies the scope of work which you will perform. Insure it has sufficient detail in terms of labor categories, % of the program (both hours and dollars) a discrete description of your effort, and any additional assurances you need to feel comfortable with the deal.

Keep on mind that a teaming agreement is an agreement to agree. It is not a contract and rarely enforceable in a court of law. That means you must negotiate your contract upon award and in many cases the prime may pressure you to lower your rates, decrease your share of the program or otherwise depart from the teaming agreement when your subcontract is finalized. Your business acumen will come into play during that transition. For tips please see the following link:

<http://smalltofeds.blogspot.com/2007/03/small-business-federal-government.html>

BECOMING A PRIME CONTRACTOR

As a prime contractor you sign a teaming agreement with a subcontractor during the RFP stage of a solicitation. Your subcontractor prepares a proposal and submits it to you. You incorporate it into the prime contract proposal to the government. You negotiate flow down versions of terms and conditions from your federal contract to the subcontractor as well as a technical description of the effort the subcontractor will perform. The subcontractor's cost proposal contains fully loaded rates for the labor categories

and material as well as the travel he intends to perform on the subcontract. The government awards the prime contract to you. You undertake negotiations with the subcontractor to convert the teaming agreement to a subcontract. The subcontract will replace the teaming agreement between you and your subcontractor.

Your role as a prime may be the result of your status a small business, a woman-owned, minority-owned or veteran-owned business under a program set-aside to one of those designations. It is usually best to subcontract no more than a 40% share of the total business to firms with whom you are teaming to avoid the appearance of a front. The statutory requirement is 51% to the prime in these types of programs but you need to convey strength as a prime in terms of resources to be deemed a winner by the government source selection board.

If the program you are bidding is a negotiable procurement it is preferable to negotiate subcontracts with team members before you negotiate your final contract with the government. Going into negotiations with the government having definitized your subcontracts reduces your risk in terms of unknowns contractually at the supplier level. It also eliminates the subcontractor wanting to know the result of your prime contract negotiations so that he can use it as a frame of reference for his negotiation position with you. The baseline when you go to the table with your subcontractor is your teaming agreement specifying his statement of work and your collective proposal to the government containing the prospective cost and price for his effort as part of the total proposal.

SUMMARY

There are many subsidiary forms of the above basic teaming approaches. You can join multi-company teams under a major prime on IDIQ umbrella contracts of long duration. You can bid a team effort using your GSA Schedule.

Although the Federal Mentor-Protégé Program is a fine vehicle, keep other options open at the same time you pursue a long term teaming partner in that venue.

Joint ventures are difficult for small and start-up companies. They are made up of resources from both companies, yet a JV exists as separate legal entity and is complex to administer. A joint venture agreement is a special form of teaming agreement subject to approval by the government agency with whom the JV is contracting. JV's are usually managed by a JV Board and include administrative costs and billing nuances associated with a "3rd Entity" that many firms find difficult to manage.

If you are in a prime contractor role you have an additional management challenge in being accountable for the performance of your subcontractors and flowing down the terms, conditions and performance requirements under which you are being contracted by the government. Your customer expects effective subcontractor management. Proposal preparation imposes a substantial burden on the prime contractor because the prime must integrate, assemble, package and deliver the final submission after receipt of data from the subcontractor(s).

Keep in mind that you may be exclusively teaming with a company on certain procurements and competing against them on others. Protect your intellectual property, only exchange fully loaded rate information and keep the relationship professional at all times.

Your reputation as a reputable team member in the small business federal government contracting community is important. Be selective and high performing in this area. Agencies, past performance data bases and other companies will be observing you, recording your performance and passing the word along to others directly and indirectly.

23. OBTAINING AND UTILIZING A GSA SCHEDULE

I. INTRODUCTION

Your small business is established in the federal government contracting sector. You have become a member of the government contracting community by registering with the Central Contractor Registration (CCR) Data Base. You have proposed, negotiated and have been awarded your first government contract(s) and have a successful past performance history with the government in selling your products and/or services.

On several occasions open solicitations or procurement activities have referenced a , "GSA Schedule", as a qualification criteria or as a venue by which to buy items or services you can supply. This article will discuss the GSA schedule program, how to apply for and negotiate a schedule for your company and how to utilize it as a sales and marketing tool.

II. THE GENERAL SERVICES ADMINISTRATION (GSA)

From the GSA Web site:

"Founded in 1949, GSA serves as a centralized procurement and property management agency for the federal government. GSA manages more than one-fourth of the government's total procurement dollars and influences the management of \$500 billion in federal assets, including 8,300 government-owned or leased buildings and 205,000 vehicles. GSA helps preserve our past and define our future, as a steward of more than 420 historic properties, and as manager of USA.gov, the official portal to federal government information and services. GSA's mission to provide superior workplaces, expert technology solutions, acquisition services, purchasing and E-Gov travel solutions and management policies, at best value, allows federal agencies to focus on their core missions.

GSA's Disaster and Emergency Operations Vendor Profile form puts small businesses on the government's radar so they do not miss out on federal contract opportunities in a time of disaster. More than 1,500 small businesses have used the online form to identify themselves."

Putting it simply the GSA is a federal government buying agency. It performs many buying-related activities which you can read about at the GSA Web Site:

<http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

GSA is empowered to accept procurement requirements from all other federal agencies, locate and source qualified bidders and negotiate pricing for supplies and services on behalf of the government. Although all federal agencies perform procurement

themselves that is peculiar to their individual domains, a vast number of products and services, particularly those common among agencies, are procured by the GSA. Over the last 10 years the GSA has sought to establish economies of scale through volume buying.

III. THE GSA CONTRACTING PROCESS

To equitably compete and pre-position terms, conditions and pricing for supplies and services, the GSA divides what it procures among various commodities and services lists with generic schedule designators. The agency also assigns procurement contracting officers to each schedule who conduct regular open advertising against the schedules through solicitation. The schedule numbers and contracting officers are listed at the following web site:

<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-13464>

Each open solicitation for a generic schedule is published at FEDBIZOPPS, the portal for all federal government solicitations over \$25k. The open solicitations contain details, specifications, terms, conditions and pricing instructions for the specific items on the schedule. Contractors prepare proposals in response to the open solicitations and submit them to the schedule contracting officer. The proposals are audited and negotiated like any other federal procurement. The term of the negotiated schedule is usually multi-year and can be as long as 5 years in duration so being able to develop and hold your pricing for the period of performance is a key factor.

Upon completion of negotiation, a specific supplier is granted a company-unique schedule identifying number under the applicable generic GSA schedule. The pricing, terms, conditions and validity duration are set for the specific company and the schedule number is unique to the firm. The company schedule is then authorized by the GSA for publication on the web for use in subsequent proposals to government agencies. The company GSA schedule is listed at the GSA Advantage Web Site and becomes part of the data base which government buyers can search.

Granting a GSA schedule to a company does not constitute a sale of goods and services. It simply establishes the pricing and the contract vehicle for readily buying from that company by a federal agency. A GSA Schedule saves time and effort for the buyer and it can be presented by the seller at his web site as an expedient way to get under contract with a federal agency. The agency places the order through the GSA. The GSA adds a small fee to the price of an item or service which the contractor collects from buying agency and pays to the GSA. The fee funds continued GSA operations and services. Under competitive conditions, sellers are authorized to offer discounts from their GSA schedules in the proposals to prospective agencies.

State governments are also allowed to buy off GSA schedules.

Federal agencies can put in place blanket purchase agreements (BPA's) through the GSA with specific companies for long term buying. GSA also conducts Government Wide Acquisition Contracts (GWAC's) for IT and other technologies. Recent examples of a GSA GWACS for large and small business are the Alliant and Alliant SB Programs.

IV. BASIC STEPS TO APPLYING FOR AND NEGOTIATING A GSA SCHEDULE:

A. Register Your Company in the Central Contractor Registration (CCR) Data Base
If you are not familiar with this process please utilize for guidance the menu item at this site on registering your small business for federal government contracting.

B. Complete Your Federal Government On-line Certifications and Representations at the ORCA Web Site:

<https://orca.bpn.gov/>

C. Obtain Your "Open Ratings", Evaluation

Open Ratings is a service run by Dunn and Bradstreet that the GSA uses. It out sources what would have to be done by the GSA Staff in terms of initial past performance ratings in response to GSA Schedule Applications. Here is a web site to learn more about it:

<https://prod.openratings.com/spe/order>

The site explains the process and shows some sample reports.

D. Locate your Generic GSA Schedule:

<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-13464>

Examine the major generic schedules listed at the above site and determine the best match for the products and services your company offers. Note the name and contact information for the contracting officer designated for the schedule. Also note the open solicitation link to the FEDBIZOPPS. Carefully review the solicitation completely and determine that you can comply with the specifications, terms and conditions and requirements in the document.

E. Contact the Schedule Contracting Officer with Your Statement of Intent and a Concise Capabilities Statement

This is where the marketing phase of the process begins. It is best to contact the contracting officer with a statement of capabilities (CAPE). Your CAPE should be brief,

concise and electronic. It should highlight the information in IV.A., B. and C. above and the management, technical and past performance elements of your products and services. Establish by letter (preferably electronic by email) your intent to submit a proposal for a GSA schedule to the contracting officer. Also confirm your anticipated proposal delivery date by telephone if possible and confirm by email. Highlight your CAPE as a qualification criterion for a company schedule award under the generic schedule you are proposing against.

F. Carefully Prepare and Submit Your GSA Schedule Proposal

Respond to each requirement carefully and in the order presented in the open solicitation. Pay particular attention to the requirements for cost and pricing data presentation. Utilize for guidance the menu items on proposal preparation and negotiation at this site. Understand that your proposal may be audited, particularly for previous pricing history related to your products and services. The contracting officer may negotiate with you the final pricing make-up of your products and services based on audit results and history. Since GSA schedules are in the public domain it is worthwhile to examine the reports available through the GSA web site on previous awards for the same or similar products or services. In addition, most companies who have GSA schedules post them at their web sites so you can get some insights into competitor pricing by looking at the fully loaded rates and their respective escalation from year to year by going to the sites and analyzing the rates located there.

G. Schedule Award

When you are awarded your GSA Schedule it should be prominently displayed at your web site and contained in your marketing literature. You can offer it to prospective federal and state customers and you can discount from it under competitive conditions. Please read the terms and conditions regarding required sales necessary on your schedule for it to remain in effect. Within a specified time frame it is necessary to have a designated dollar value of sales activity or your schedule will automatically become inactive.

Carefully follow the directions in your schedule contract for collecting the GSA fee from your agency customers as a function of pricing quotations and payment. The fee is calculated as a designated percentage over and above that which your schedule prices display. It must be collected by you as a function of your quotation to your customer.

SUMMARY

In addition to featuring your schedule prominently at your web site, your GSA rates should be included in your market literature and your schedule number should be included as a reference in your new business proposals. A GSA schedule permits a quick ordering process for your federal and state clients. In your dealings with prime contractors to which you aspire to subcontract you can reference your schedule as valid pricing which they can readily include in their proposals to government agencies

A GSA schedule facilitates teaming with other synergistic small companies in proposing large scale efforts.

Keep in mind that obtaining a GSA schedule does not guarantee new business will come to you. Very few companies await government agencies to find them by searching the GSA data base. Most small businesses actively market their schedule to targeted agencies as an expedient way to contract with them or as a qualification criterion for new business awards.

24. IMPORT/EXPORT MANAGEMENT AND SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

Because the world has become tightly wired technologically and the current economic situation ties us inexorably to foreign economies, it is likely small business will encounter the import/export process either on the selling or the buying end of federal government contracts involving foreign countries. This is particularly true with Foreign Military Sales (FMS) contracts through DOD and services contracts with civilian agencies such as USAID.

Key to your success will be the development of links to buyers or sources in other nations. You may have gotten the idea that it is a simple and perhaps easy enterprise to get into and successfully perform. It is not in my experience any such thing. Companies who are successful evolve contacts and product relationships in foreign countries and in the US that take careful and businesslike approaches. You will find yourself importing to this country by exporting from other countries and vice versa. There are laws and processes that apply in both domains governing taxes, duties and the import/export process.

It is recommend that you research thoroughly the answers to the following questions:

(a) What are the specifics of the equipment and supplies you are becoming involved in? (Manufacturer's part number, performance specification, unique qualities and market potential) What are the distribution channels that currently exist; is there a product warranty and are their spare and repair parts involved?

(b) Who buys the equipment and supplies in the United States and in countries you intend to sell to. (commercial consumer, government agency, large business, hospitals, military etc.) Do you plan to do market research on the potential demand for a product before you buy it? My advice is that you should - before you buy. I further advise that you research practical marketing, sales and distribution channels for a product before you buy it or import it. What are the possibilities of locally retailing it yourself?

(c) What are the laws and regulations regarding the movement of equipment and supplies? How are they taxed in the US and how are they taxed in foreign countries? Are they regulated by US or foreign countries? Are licenses required to either import or export the items? The answers to all these questions vary with the product and the US State Department and US Customs and Border Protection will have those answers once you identify the equipment and supplies. The links to the associated web sites are in the section below entitled 'THE REGULATORS'

(d) What service can you perform in (a)-(c) above? What value can you add to the

process? Do you have special channels to either a customer or a source for the supplies and equipment? Do you have special knowledge or do you know others with special knowledge of these equipment and supplies, customers and sources which you could involve in creating or designing a niche no one else is filling or offer these items at a price attractive enough to generate volume and profit for your business and beat the competition.

(e) Who is your competition and how are they performing (a)-(d) above? Your business involves offering the service of importing equipment and supplies to fill the need in the US from sources out of the country and the other way around. You must develop an available niche that other companies do not fill, either by having lower prices, more and better sources, or a low overhead cost for handling the business; faster delivery, better product warranty, parts service and replacement, all play in the equation. Your market plan must address the reliability of your sources in other countries and the US, the quality of their product and how well they support their product in countries other than their own.

SHIPPING AND FREIGHT FORWARDERS

Along the way be particularly careful in your planning to research Freight Forwarders (FF). Use the Better Business Bureau (BBB) or other such government agencies to research the experience the buying public has had with stateside companies you deal with. BBB company research capabilities on the web are free to the public. Carefully review FF terms and conditions and assess the liability arrangements in the event of product theft or loss for goods coming in from overseas.

A freight forwarder is your paid agent to safeguard your property. He is also registered to handle clearing US customs. Certain other FF specialize in dealing with foreign countries. He is normally the individual to which your overseas manufacturer ships you product or through whom you ship product to foreign countries. Relying on the manufacturer himself to ship, insure, handle export and import requirements is not a safe bet and shipping directly to a foreign country has no assurances of delivery.

The foreign factory producer has too much conflict of interest in simply getting you to pay his bill and move on and your expertise in clearing customs in a foreign country may be limited. Freight forwarder expenses must be added to those of the product you buy from the factory source. These expenses should be included in your business plan and in your product pricing prior to going to market.

BE CAREFUL

Be wary of networks and exchange sites on the web that offer to make you rich and handle all the arrangements. This is seldom the case. Check them out with the BBB closely. The BBB Web site search page is as follows:

<http://search.bbb.org/>

INSURANCE

On the subject of insurance, I assume you have looked into business insurance. A Limited Liability Company (LLC) is a form of Subchapter 'S' corporation that usually experiences the lowest rates for insurance. Have you looked into becoming an LLC? Insurance is a must in the line of business you are pursuing.

THE REGULATORS

For research regarding exporting and importing goods to and from foreign countries please see the web site for the Bureau of Industry and Security out of the Department Commerce. It is the keeper of export administrative regulations and classification numbers. It also has a commerce country chart that shows taxes and duties and license information by country. There are 5 generic product groups in the commerce control list categories:

<http://www.bis.doc.gov/>

The Office of Foreign Asset Controls out of the Treasury Department is also a site you will have to visit to see if there are any specially designated nationals or targeted countries that the US has regulations against selling to:

<http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>

The US State Department and the US Customs and Border Protection regulate and assist in import and export matters. I strongly suggest you visit their web sites. The State Department controls high technology items and weapons through the International Traffic in Arms Regulation (ITAR). Export licensing under the ITAR can be a lengthy process. Services and technical data as well as products of a weapons or high

technology nature requiring licenses appear on a controlled items list in the ITAR. A company can unwittingly make an illegal export of technical data simply by conveying the wrong specifics regarding a controlled item to a foreigner over the phone. The serious nature of ITAR violations can be seen in case histories at the following web site:

<http://rosecoveredglasses.blogspot.com/2008/11/as-recently-announced-by-project-on.html>

For excellent articles on ITAR compliance, please see the following links:

http://mae.pennnet.com/display_article/367164/32/ARTCL/none/none/1/ITAR-compliance:-ignorance-is-no-excuse/
http://www.militaryaerospace.com/index/display/article-display/0035390444/articles/military-aerospace-electronics/volume-21/issue-8/special-report/import_export-regulations.html

The web site for the US State Department and US Customs and Border Protection respectively are as follows:

<http://www.state.gov/e/eb/cba/>

http://www.customs.ustreas.gov/xp/cgov/import/commercial_enforcement/trade_rules.xml

You will need to research the above regulatory sites as appropriate once you identify the specific products in which you intend to deal. It will be necessary to determine licensing, declaration, tariffs, taxes and trade implications. All these factors should be fully documented in your business plan before you undertake operations in a product area.

FINANCE AND CREDIT:

Finally your business plan will be your best long -term asset in establishing your credibility with the banking community and with prospective investors. My advice is to start small and slow, with minimal personal investment and begin dealing in products only after you have a well developed business plan and market research indicates they will be profitable. As the business establishes itself, a demonstrated cash flow and projected earnings statement can be used as leverage with a good business plan to achieve a small business loan, perhaps working with the SBA for a guarantee. Small business credit cards are a possibility if you can work the interest rates into your planned expenses and recover them in your product pricing.

Your planned banking arrangements should involve setting up accounts that involve automatic currency conversion features in the countries you plan to do business in.

I recommend being careful not to make your inventory a burden. Carrying excessive financed inventory without associated sales to pay the bills is one of the biggest traps you can fall into. Also remember many products have a shelf life which must be considered in the storage environment.

25. INSIGHTS TO SUCCEED IN SMALL BUSINESS FEDERAL GOVERNMENT SERVICE CONTRACTING

INTRODUCTION

Service contracting to the federal government is a natural venue for small business. It does not require a product with a niche market or capital intensive manufacturing facilities.

Service contracting does require skilled management and labor resources capable of performing a scope of work for which the government has identified a need and for which outsourcing to an industry contractor has been selected as the means to fulfill that need. The venue demands strong human resources management, industry teaming and an enhanced business system to price, account and bill on a job cost basis under government service contracts.

Small enterprises in the commercial services market are tempted to immediately begin bidding jobs in federal government contracting, approaching them like commercial efforts. They quickly find there are major differences in the way the government contracts are marketed, proposed, priced and performed. These differences are not "Rocket Science" but it is necessary to learn about them and plan for success.

Here are 8 insights for planning your success in small business federal government service contracting:

1. UNDERSTAND THE LENGTHY SALES CYCLE

What immediately becomes apparent to the commercial small business when entering the federal contracting service contracting market is that the sales cycle is a long one and the preliminary steps are often hidden from public view.

Often misunderstood, is that much has occurred in the way of marketing activities by companies in advance of notices formally published by the government on FED-BIZOPPS. By the time the formal, solicitation is published it is too late to market for setting a procurement aside for a small business designation if it has not already been established as such.

In addition, formal solicitation publication closes the window on self-marketing by HUB Zone and 8(a) firms for set asides to them individually without competition. In short, businesses have been marketing for the requirement long before it became formally announced at FEDBIZOPPS. For additional details please see:

<http://www.smalltofeds.com/2009/09/what-small-business-should-know-about.html>

Even if a company has had exposure to an agency, marketed on a program in advance of its announcement or become a member of an industry team to bid the job, the proposal and award process, to include negotiations and start up, can easily consume

90 to 120 days as a minimum. For major programs the process often exceeds 6 months in duration. Planning must occur for the expense associated with supporting such lengthy marketing efforts before any cash flow results.

2. APPRECIATE APPLICABLE DEFINITIONS, ROLES AND REGULATIONS

Participation in the government contracting market can involve participating as an individual, becoming a subcontractor as a company or seeking a prime contractor role. Those with product research and development support needs can participate in venues like Small Business Innovative Research (SBIR) and Mentor/Protege Programs. A GSA Schedule also provides opportunities for those in finished product sales. Please refer to the following articles for explanations of these roles and program definitions:

<http://www.smalltofeds.com/2010/07/what-is-small-business-federal.html>

http://www.smalltofeds.com/2010/06/techniques-for-product-development-in_01.html

<http://www.smalltofeds.com/2010/01/small-business-government-grants-versus.html>

<http://www.smalltofeds.com/2007/05/achieving-and-utilizing-gsa-schedule.html>

3. CONDUCT MARKET RESEARCH

If you are relying on FEDBIZOPPS or like sites for new business you will be very disappointed. Pre-solicitation notices do have promise, but you have to get inside an agency to find out who has the funding, the need and the decision-making authority. It is rarely the contracting officer who posts the notice who has these responsibilities.

Pre-solicitations are alerts to industry, attempts to gauge industry interest or a way of "Kicking the Can Down the Road" until funding becomes available. These notices are an indirect way of saying, "Come Visit Me and tell me about your company", or "Send Me your CAPE". The full formal notification will come out at a time to be determined by when the agency gets the funding and how much interest there is in the contractor community. A schedule for when the formal bid notice will occur is rarely posted.

Please read the following article carefully for further guidance:

<http://www.smalltofeds.com/2009/09/what-small-business-should-know-about.html>

4. PROMOTE CAPABILITIES

Develop a capability statement (CAPE) to respond to government postings and mail directly to government agencies and to large corporations doing business with the government.

A capability statement is a necessity as a standalone marketing tool for dealing with

government agencies and contractors. It should be short (no more than 2 pages) and hard hitting, containing all the information necessary for a government contracting officer or company buyer to place an order, as well as your registration information at local, state and federal web sites, your NAICS Codes and contact information.

Insert your CAPE in the tab at your web site where you discuss your background information and your government registrations.

See the second, vertical, Box Net "References" cube in the left margin of this site for an example of a good service contractor capabilities statement in the public domain.

5. ACQUIRE PERSONNEL STRATEGICALLY

Start up service contractors face the dual problem of establishing the enterprise with the one-time, non-recurring activities necessary to get the operation underway and at the same time acquire the core management talent and subsequent help as the business grows.

Even established companies who enter government service contracting find they cannot sustain a work force for large scale agency programs until the contracts are in hand to finance them.

A core team is an absolute necessity; it may be small and the business proposals may be few at first. But the core team product must be strategic in terms of high probability marketing to build the company base.

Supplementary help can be acquired by permanent ads at the company web site for generic skill sets, contingent hire agreements with prospective employees and similar techniques that position the resources on deck for business growth.

Small businesses commonly utilize contingent hire agreements to locate promising individuals who can bring projects or contacts with them when they join the firm. They are willing to negotiate a prospective wage and salary arrangement in advance of a proposal submission and commit to an offer of employment with benefits and commission should the program be won. They further offer to reimburse the participant for expenses and business related costs during the proposal period, if pre-approved.

The key to these arrangements is to identify target projects that both you and the candidate can go after, where the candidate is uniquely qualified to :

(1) Help win the job

(2) Contribute heavily to the proposal. Just bringing someone on who has no ability to offer targets usually does not work.

6. MAKE ASTUTE BID/NO BID DECISIONS

Government contract proposal preparation is time consuming and can be costly. Meeting the agency Request for Proposal (RFP) requirements with a responsive proposal can be well worth the effort if a winning strategy can be formulated.

When considering submitting a proposal to a given government solicitation, conduct a bid/no bid exercise. By going through that process you will begin formulating your win strategy or you will discover that you should not bid this job for lack of such a strategy. The elements of the process are in the form of questions to ask yourself against topics for key consideration at the following link:

<http://www.smalltofeds.com/2007/02/federal-government-contract-proposal.html>

Affirmative or non-affirmative answers to the topical questions and ability to fill in the blanks will drive your decision to bid or not bid a solicitation.

7. PREPARE YOUR BUSINESS SYSTEM FOR PRICING, ACCOUNTING AND BILLING

To effectively market a federal government contract a small business must sell on the basis of having a business system as well as technical performance infrastructure ready to run the job when a contract proposal is submitted. This dual requirement is where many small businesses fall short in their federal government contract start up planning.

Parallel thinking is required to plan for government project technical effort against a template of necessary business process infrastructure, driven by introducing Federal Acquisition Regulations (FAR) into the company. Key elements of the necessary business system infrastructure are discussed in the following articles:

<http://www.smalltofeds.com/2008/03/establishing-far-and-cas-compliant.html>

<http://www.smalltofeds.com/2010/10/managing-risk-in-small-business-federal.html>

8. PROPOSE TO WIN BY MEETING THE PAST PERFORMANCE CHALLENGE

As a small business begins the proposal submission process to federal government agencies or to prime contractors, the past performance challenge is major. By definition a start-up company in government contracting has no direct government agency past performance projects to site in meeting the requirement in requests for proposals (RFP's) for historical references to similar projects in terms of size, duration and complexity

So how can a new organization or one that is new to government contracting muster a response to the past performance challenge?

The answer lies in historical projects that may be similar in the commercial arena and a high quality proposal that clearly demonstrates an understanding of the requirement at hand, a unique and cost effective project plan and high performing personnel and/or products tailored to the statement of work to offset an interim, light past performance record.

For further details see the following article:

<http://www.smalltofeds.com/2008/07/small-business-government-contracting.html>

SUMMARY

This writing has conveyed insights for planning participation strategically in the small business federal government service contracting market.

Consider the lengthy sales cycle and the roles your enterprise can best play in the venue. Conduct thorough market research, promote your capabilities endlessly and make astute bid/no bid decisions.

You must acquire core and supplementary help as business growth permits by using methods to preposition human resources. Prepare dynamic proposals with unique project plans to meet the past performance challenge, then execute your project plans to succeed.

26. FEDERAL GOVERNMENT CONTRACT PROPOSAL PREPARATION

INTRODUCTION

Your marketing efforts have resulted in locating a solicitation for supplies and services that is exactly suited to your business. The solicitation by the government may be a result of your self-marketing efforts or you may have located it at FEDBIZOPS, the gateway for all federal government business in excess of \$25K. The fact that the government has now converted a project requirement into a formal solicitation means that the funding is available for a contract and the authorities within the government agency have authorized a source selection process.

BID/NO BID DECISION

Government contract proposal preparation is time consuming and can be costly. Meeting the agency Request for Proposal (RFP) requirements with a responsive proposal can be well worth the effort if a winning strategy can be formulated. When considering submitting a proposal to a given government solicitation, conduct a bid/no bid exercise. By going through that process you will begin formulating your win strategy or you will discover that you should not bid this job for lack of such a strategy. The elements of the process are discussed below in the form of questions to ask yourself against topics for key consideration. Affirmative or non-affirmative answers to the topical questions and ability to fill in the blanks below will drive your decision to bid or not bid a solicitation.

A. Customer:

Do you know this customer? Yes ___ No ___

Does this customer know you? Yes ___ No ___

Do you have any idea of the available funding for which the customer has obtained authorization? Yes ___ No ___

Specify the marketing contacts which have been made with the customer thus far:

Date:

Contact:

B. Supplies and Services:

Specify the supplies and services to be delivered in the prospective contract:

Line Item (s):

Description:

Are the supplies and services in the RFP Statement of work a good match for what the company sells? Yes ___ No ___

Is the RFP Statement of Work specific enough to identify risks? Yes ___ No ___

Is the RFP schedule specific enough to determine the delivery requirements?

Yes ___ No ___

Can the delivery schedule in the RFP be met? Yes ___ No ___

Specify the delivery schedule for the prospective contract:

Line Item:

Delivery Date:

C. Contract Type/Value/Start/End Date:

Does the proposed contract type (FFP, CP, T&M, etc) suit the nature of the work?

Yes ___ No ___

Specify the contract type for this program: _____.

Are there any unusual terms and conditions specified in the government RFP? Yes

___ No ___

Specify any unusual terms and conditions:

What is the Rough Order of Magnitude (ROM) value of the prospective contract?

\$ _____.

What is the anticipated start date of the contract? _____.

What is the anticipated end date of the contract? _____.

D. Company Strengths:

Is this prospective contract for effort in which the company has strong skills?

Yes ___ No ___

Specify the strengths the company will utilize in meeting the product specification or statement of work:

E. Company Weaknesses:

Are there any company weaknesses in meeting the product specification or statement of work? Yes ___ No ___

Specify any weaknesses for which the company must compensate and manage associated risks:

F. Teaming Arrangements (If any):

Does your company plan to team with other companies in the performance of the prospective contract? Yes ___ No ___

Identify the other team member companies:

Will your company be a prime or a subcontractor? Prime ___ Subcontractor ___

Have NDA's and Teaming Agreements been executed? Yes____No _____

G. Competition:

Is this a sole source set-aside procurement to your company? Yes____No_____

If this is a competitive procurement, identify the prospective competition and their associated strengths/weaknesses:

H. Win Strategy:

Identify the proposal features and themes which will be utilized in the proposal as discriminators to win this program:

Management:

Technical:

Cost:

I. Proposal Budget:

Estimate the man hours and dollars for proposal labor, any travel expenses, shipping, packaging, samples and other expenses associated with preparing the proposal. The government does not reimburse the contractor for proposal preparation under the subsequent contract. Proposal expenses must be included in the cost center overhead or G&A and accounted for as marketing expense allocated across the cost center or the company.

Labor Hours ____
Labor Dollars \$ _____
Material _____
Travel _____
Reproduction _____
Samples (if any) _____
Packaging/Binding/Ship _____
TOTAL \$ _____

J. Bid/No Bid Decision:

If you can answer "YES" to at least 5 of the questions under paragraphs A through D

above, it is likely you should bid this procurement.

If the answers to 7 of the 10 "YES" or "NO" questions under paragraphs A through D above are "NO" it is unlikely you should bid this procurement unless the answer to G is "YES". Even then, examine your answers and carefully review whether this business is suitable for your company. If the answer to E is "YES", it is unlikely you will bid this procurement successfully unless the answer to G is "YES". Even then, determine how you will overcome the weaknesses you have identified in your company associated with doing this work before you decide to bid it. Carefully compare the competitive analysis under Item G to the win strategy under H before you make your final decision.

K. Decision:

BID _____

NO Bid _____

YOUR PROPOSAL

You have decided to bid a prospective project. You have downloaded the RFP from the government agency and the clock has started on the proposal due date.

Visit the federal government on line certifications and representations web site and complete the standard information there, which can be utilized for all federal agency proposals. Certifications and representations are required for virtually every proposal submission. That web site is at:

<https://orca.bpn.gov/>

The following information addresses the proposal process. It is from an independent consultant named Deborah L. Kluge, who is a specialist in proposal writing and consulting. The below is an extract from Deborah's Web site.

If you are preparing a FAR Part 12 Commercial Proposal, certain elements of this material may not apply, but you are encouraged to utilize the information and the checklist to insure you have covered all the bases.

"THE RFP

Read it once, then read it again. And again. Experienced bidders know that several readings of an RFP are necessary for a complete understanding of what is required. Learn what the lettered sections of an RFP are (e.g., Section B refers to your pricing, Section C is the scope-of-work, Section K contains Representations and Certifications, Section L provides instructions to the bidders, Section M specifies the bid evaluation criteria, etc.). The titles of the lettered sections are generally the same in every RFP. Be aware that information critical to your bid may be scattered among many different sections of an RFP.

Put the RFP in a 3-ring binder for easy use as a reference document. You might also want to insert dividers in front of each important section for quick reference. Use small "Post-It"™ notes at the edge of a page to mark important pages or paragraphs. That way, you can find them quickly.

If you don't understand some of the information in the RFP, you can submit written questions to the Contracting Officer.

Some RFPs specify a date by which questions are due. Make sure you send in your questions before the due date or they may not be considered.

Be aware that the Government's response to all submitted questions are distributed to all bidders, usually through a written amendment to the RFP. Although you and your firm will not be identified as the "asker" of specific questions, the way in which you word your questions could provide important information to your competitors. Word your questions carefully to ensure that you don't give away information on your strategy or pricing.

If you call the Contracting Officer to obtain or clarify information in an RFP, be aware that verbal information given to you by the Government is not binding.

THE PROPOSAL OUTLINE

If you have downloaded an RFP from the Internet, you can use that file to begin constructing your proposal outline.

If you do not have the RFP on disk, use a scanner to scan in important sections for use in preparing your outline.

Some people prepare an annotated outline as well as a basic outline. An annotated outline can contain important points from the RFP, as well as your own information on what you are planning to say in each section.

If you prepare an annotated outline, copy your file, save it under a different name, and delete the annotations. The result will be a basic outline which you can use for easier viewing and tracking of proposal sections and subsections.

For each section and/or subsection of your outline, indicate the estimated number of pages that will be written, the person responsible for doing the writing, and the evaluation points.

Put important instructions on the first page or at the top of your outline, so you don't have to rummage through the RFP to find them. These instructions might include: proposal due date and time, number of copies, page limits, font size, page margins, packaging and delivery instructions.

THE PROPOSAL SCHEDULE

Make one and stick to it!

Work backwards from the proposal due date.

You might want to make a separate schedule for preparation of the cost/business proposal.

Make sure you leave plenty of time for copying, binding, and delivering the proposal. Remember, the copier knows that an important document is being copied, so it will

break, jam or smudge. Have a back-up plan that includes having extra paper and toner on hand and sending the proposal out to be copied.

Distribute the schedule to all members of your proposal team.

PROPOSAL PREPARATION

Make sure you are familiar with the instructions in Section L of the RFP.

Study the proposal evaluation criteria and the points allocated to each section/ subsection of the technical proposal, as well as the points that are allocated to cost. This information will tell you what to emphasize and where to put your efforts with regard to proposal preparation.

Hold an initial and regular follow-up meetings with your proposal team to discuss strategies, progress and problems.

To the extent possible, your Technical Approach and strategy should provide answers to the following questions: who, what, when, where, how, and why.

Depending upon the instructions in the RFP, your Management Section might contain a discussion on how you will manage the overall project, a discussion on how you will manage and oversee the work of your staff and subcontractors (if any), an organization chart of the project, and position descriptions of project staff.

In your Personnel Section, you may be required to include narrative information on the experience and skills of the staff members you are proposing for the project and/or their resumes.

In your Related Experience or Capabilities Section, you may need to demonstrate that you have performed similar or related work for this or other clients.

Your proposal may have other sections such as an Executive Summary, a discussion of your Understanding of the Problem, Appendices, or other required information as specified in the RFP.

Don't assume that the Government knows your organization's capabilities, staff or the projects you have carried out. The Government is supposed to evaluate only the specific information contained in your proposal. That means it must be written down in accordance with RFP instructions.

Use tables, charts and graphics to summarize information ("a picture says a thousand words") or to break up your narrative.

Check the entire proposal for the following: technical consistency; spelling; page numbering; section/subsection numbering or letting; consistency of appearance of headings, subheadings, font types and font sizes.

Make sure you have filled in and signed all the forms in the RFP that you must return with your bid.

Before and after copying your technical and cost proposals, check to see that each copy contains all pages and that they are in the proper order.

COSTING

You have a technical strategy -- you should also have a costing strategy!

Don't wait until the last minute to begin gathering cost information that you will need to

prepare your cost estimate.

Be aware of and understand the type of contract you are bidding: fixed-fee, cost-plus, cost-reimbursement, time and materials, etc. This will likely affect the way you price your proposal.

Prepare a spreadsheet template or checklist of items to include in your cost estimate. Make sure your cost estimate is consistent with what you are proposing to do or provide.

You may need to develop some specific assumptions for pricing purposes. If appropriate, you can include these assumptions in your cost/business proposal on a separate page or as footnotes to your estimate. In any event, always document your assumptions so that you can refer to them later and make changes if needed.

Check and re-check your numbers and formulas. Review the hard copy of your estimate to help in spotting errors.

Make sure that your cost estimate can be easily read. Don't use a font that is too small.

IF YOU WIN

Celebrate!

Uh oh -- you now have to actually manage and implement your project.

IF YOU LOSE

You can call the Contracting Officer to arrange an in-person or telephone debriefing to find out the reasons for your loss.

Try not to get too discouraged -- no one can win all the time.

Learn from your experience and apply that learning to your next bid.

PROPOSAL PITFALLS - Don't Let These Happen to You!

Failure to follow the RFP instructions regarding organization of the proposal, inclusion of required information, page limits, volumes, etc.

Failure to take evaluation criteria and allocated points into consideration when preparing your response.

Failure to understand and to demonstrate an understanding of the problem (i.e., the reason why the agency is issuing the RFP).

Failure to submit your proposal on the required date and time.

Failure to include all of the information requested by the Agency.

Failure to tailor your response to the specific RFP.

Costs/Prices are unreasonable (too high or too low) or incomplete.

Costs/prices do not provide any detail or breakdown information (if required) for line and sub-line items.

Failure to include specifics of your proposed approach to the project.

Proposal is unprofessional in appearance (e.g., typos, blank pages, unnumbered pages, smudges, no whitespace, sloppy-looking, etc.). This reflects poorly upon your company.

Proposal is poorly written (e.g., information is not presented/organized in a logical manner, proposal is difficult to follow, poor grammar, etc.).

Proposal merely repeats or paraphrases the RFP.

Proposal does not explain how or by whom the project will be managed.
Proposal does not contain RELEVANT information about your firm, its capabilities, and/or its management and staff.
Proposal does not demonstrate that your firm/organization and personnel have the experience and capability to carry out the project.

PROPOSAL CHECKLIST:

1. RFP/DOCUMENTS

Obtain complete copy of RFP
Distribute RFP to appropriate staff.
Review RFP for missing pages/sections.
Prepare questions for submission to Contracting Officer.
Receive and review responses to questions.
Collect, distribute and review pertinent background documents.

2. PARTNERS

Identify partners to participate in bid.
Determine type of partnership arrangement.
Prepare teaming or other type of appropriate agreements.
Receive signed agreements from partners.
Determine each partner's level of effort for project.
Number and type of long-term staff.
Number and type of consultants.

3. TECHNICAL STRATEGY

Hold strategy meetings.
Identify the partnership's strengths and weaknesses.
Identify competition and their strengths and weakness.
Identify ways to differentiate partnership from competition.
Develop strategic themes.
Develop strategy for each component and overall.

4. TECHNICAL PROPOSAL

Prepare draft outline/revise as needed.
Identify & select writers for each section.
Determine page numbers for each section.
Determine document format (font, major/minor headings, etc.).
Provide writers with written formatting guidelines/instructions.
Prepare/distribute list of nomenclature, abbreviations, acronyms.
Identify and provide writers with relevant sections from past proposals.
Prepare schedule/identify due dates for draft sections.

Determine review, feedback and editing process for written sections.
Ensure compatibility of software packages and versions.
Ensure compatibility of document transmission via e-mail.
Ensure sufficient quantities of appendix materials are available.

5. PERSONNEL

Prepare packet of materials for long-term candidates.
Prepare personnel checklists/tracking list for candidate documents.
Prepare commitment letter(s) for signature by candidates.
Recruit long-term staff and consultants.
Collect Resumes
Sort Resumes by category/areas of expertise.
Review Resumes
Identify best candidates and alternates.
Confirm candidates' interest/availability.
Obtain additional info from candidates for Resumes, if necessary.
Obtain signed letters of commitment from candidates.
Review personnel checklists for missing items.
Determine format for re-written Resumes.
Re-write Resumes.
Prepare skills matrices.

6. PAST PERFORMANCE REFERENCES

Use RFP format if required.
Update and/or prepare past performance information as needed.
Review for accuracy and completeness.

7. PACKAGING

Select cover design (map, picture, graphic, etc.).
Identify info for cover (RFP #, date, submitted to/by, etc.).
Prepare cover.
Determine how proposal will be packaged.
Purchase binder rings and covers, if needed.
Purchase notebooks if needed.
Purchase dividers/tabs if needed.
Ensure sufficient quantities of all packaging items are available.

8. FINISHING TOUCHES

Spell check all sections.
Gather appendix materials.
Prepare Table of Contents.
Prepare Transmittal Letter.

Prepare Inside Cover Sheet for Technical Proposal.
Prepare Section Tabs/Dividers for Technical Proposal.

9. PRODUCTION

Determine where and by whom proposal will be reproduced.
Insert special pages, charts, etc., if required .
Insert appendix materials.
Check pages in each copy for legibility.
Check each copy to ensure no pages are missing.

10. PROPOSAL DELIVERY/LOGISTICS

Preparations for Delivery

Obtain packaging materials (boxes, wrapping paper, tape).
Purchase box handle (if needed for hand carrying).
Prepare label for technical proposal.
Prepare outside address label.
Mark "original" on 1 copy of proposal.
Prepare receipt (for hand carrying).

Mailing

Check courier service schedules (# days required for delivery).
Wrap technical proposal and affix proposal label.
Affix outside address label.

Hand Carrying

Identify person to carry proposal.
Make airline and hotel reservations.
Wrap technical proposal and affix "technical proposal" label.
Affix outside address label.
Affix handle, if required.
Provide receipt to person who will hand-carry proposal. "

SUMMARY:

This article has offered guidance as a template to apply to your marketing operations for accommodating federal government contract proposal preparation. Proposals are special, sometimes exhausting projects, but a necessary part of doing business with government agencies. Like many other aspects of business, the more proposals you prepare, the more you learn and the more can borrow from past practice for the next one.

As a final note please read the following carefully. Your proposal data may contain rate information, proprietary data or strategic technical solutions which you would not want to fall into the hands of a competitor. The government does not sign Proprietary Data Agreements (PDA's). The government's obligation to protect your information is covered in the following FAR clause and requires protective markings by you on the title page of your proposal and on each subsequent page.

FAR 15.509 Limited use of data.

(a) A proposal may include data that the offeror does not want disclosed for any purpose other than evaluation. If the offeror wishes to restrict the proposal, the title page must be marked with the following legend:

"The data in this proposal shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; provided, that if a contract is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction."

(b) The offeror shall also mark each restricted sheet with the following legend: "Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal."

(c) The coordinating office shall return to the offeror any unsolicited proposal marked with a legend different from that provided in 15.509(a). The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

27. THE SMALL BUSINESS GOVERNMENT CONTRACTING

“PAST PERFORMANCE” CHALLENGE

As a small business begins the proposal submission process to federal government agencies or to prime contractors the past performance challenge is a major challenge. By definition a start-up company in government contracting has no direct government agency past performance projects to site in meeting the requirement in requests for proposals (RFP's) for historical references to similar projects in terms of size, duration and complexity.

Past performance data must be specific to the enterprise bidding a contract. It cannot site historical references to performance of individuals now in the company when they were with other firms, achievements by predecessor companies or successful projects that the current company did not perform as its current entity. The purpose for this rigid perspective by the government is to avoid "Fronting" a new enterprise with misleading information to obtain a high past performance rating.

So how can a new organization or one that is new to government contracting muster a response to the past performance challenge?

The answer lies in historical projects that may be similar in the commercial arena and a high quality proposal that clearly demonstrates an understanding of the requirement at hand, a unique and cost effective project plan and high performing personnel and/or products tailored to the statement of work to offset an interim, light past performance record.

A past performance reference sheet usually accompanies an agency RFP. It normally requires the bidder to fill it out with references to historical projects the company has performed and the contact points for confirmation. The government may request these forms in advance of the main body of the proposal to allow enough time to send them to the references. The past performance form is sent by the government to the references and you never see the result. The input goes directly from your past performance references back to the government.

Many small businesses work through prime contractors to "Grow" past performance history (subcontracts count). By teaming with a sizable firm a small entity can relate its participation to larger projects and ultimately graduate to a good library of references, carefully maintained and kept as a living, growing data base of good customer service records that can be sited again and again in proposals.

It is wise to keep customer perceptions of your professionalism and products or services alive by constant vigilance, visits, surveys and other feedback mechanisms so that you are not surprised at a proposal debriefing when you find that a client you thought rated you highly did not.

The major services maintain past performance records by contract that you can access. Inquire with them as to a membership at the appropriate web site and review them regularly. The GSA utilizes service companies to rate contractors. You can get your rating by inquiring with them, much like a credit rating, except pertinent to cost, schedule and technical performance. Monitor your D&B report. It is always out there for prime contractor and government assessment of your financial health, your vendor payment history, your organization profile and your rating.

The Central Contractor Registration (CCR) database has a narrative to profile your company. Check your registration and insure you have a current and complete description of your supplies and services available to all who use the CCR Dynamic Search Mechanism.

Insure your web site, your capability statement and your marketing plans are maintained current alive and dynamically reflective of your successes as you pursue new business and carefully develop your library of past performance record by project with accessible profiles to use in your government proposals.

28. CONTINGENT HIRE AGREEMENT

The below document is offered as a generic “Starter” document for situations where a small business cannot yet establish an employment relationship with an prospective employee due to not having yet received a government contract.

The agreement provides a business relationship between the company and prospective employee to work together on marketing, proposals and related activity pursuant to achieving business accounts and/or government contracts, whereupon the employee can be offered a full time position.

US federal agencies commonly recognize a contingent hire agreement in proposals as sufficient evidence of resource availability.

CONTINGENT HIRE AGREEMENT

CONTINGENT HIRE is defined as a prospective employee whose employment is based on the company being awarded specific accounts or contracts in which the prospective employee has participated in marketing whose employment is based on the award of said specific accounts or contracts. It is anticipated that the prospective employee will participate in marketing efforts to achieve the necessary business to support employment as defined herein and the prospective employee specifically grants permission for _____ to utilize this agreement as demonstration to the customers listed in Paragraph 12 below of availability and qualification for the associated work.

During the marketing period and prior to achievement of employee status, the prospective employee will not be paid by _____ but may receive reimbursement for related expenses if approved in advance by _____.

This contract is made by and between _____ and ____ (the prospective employee”) whose address is ____ and whose Social Security Number is _____.

1. **Nature of Agreement:** This agreement establishes a contingent at-will employer-employee relationship between _____ and the employee. This agreement will be converted to an employment contract at such time as the specific account(s) identified in this agreement are awarded to _____. As such, the Prospective Employee is neither a Regular State Nonexempt Employee nor an Exempt State Employee, and does not occupy a Regular State Position. All of the rights and privileges available to the Prospective Employee are governed solely by the provisions of this agreement.

2. **Scope of Services:** _____ hereby commits to engage the Employee to perform the duties and responsibilities of the position of ____ at such time as the account(s) identified by customer title and geographic locations noted in Paragraph 12 below are executed between _____ and the customer (s) The prospective duties include, but are not limited to, the following:
(Attach a detailed job description).

The employee will report to and work under the supervision of:
Name:

3. Term: Unless otherwise terminated pursuant to Paragraph 8, the term of this agreement is from ___ to ___. There exists no expectancy of a continued renewal or agreement extension beyond the above-noted term.

4. Compensation: (Upon Employment) For the services to be performed under the provisions of this agreement _____ will pay the Employee an hourly rate of: \$____, payable biweekly, in an amount not to exceed \$ ___ annually/maximum contract amount once the prospective employee becomes a member the company.

5. Workweek: (Upon Employment) Hours per week: ___ Specify if seasonal/
intermittent: (Yes) (No)

Any hours in excess of 40 hours per week are subject to the overtime provisions for nonexempt employees where applicable. _____ reserves the right to establish the exact hours of any shift that the Employee is assigned to work. Positive time reporting is required under this contract.

6. Benefits: (Upon Employment)

- a. The Employee will be covered by Worker's Compensation and Unemployment Insurance when she/he becomes a member of the company as defined herein.
- b. The Employee will not be eligible for leave benefits (or compensation therefore) or retirement and health benefits.

7. Involuntary Deductions: (Upon Employment) _____ shall withhold, as required by law, State and Federal Taxes and Employee Social Security Contributions from all compensation paid to the Employee by _____.

8. Rights in Data: _____ is the owner of all research, notes, data, computations, estimates or other information developed by the prospective employee in the course of this employment, and of any memoranda, reports or other work products resulting there from. Upon the conclusion or termination of this Agreement, all such material will be left in the possession of _____.

9. Discharge and Termination:

a. Termination by Employer. The employee serves at the pleasure of the _____ which may, in its sole discretion and without cause, terminate this agreement at any time. In addition, should _____ be notified that funds are not awarded by the accounts listed below to support this agreement the agreement will immediately be terminated.

b. Termination by Employee: The prospective employee may terminate this agreement by giving prior notice as is reasonable under the circumstances for the orderly transition of his/her duties and responsibilities, but in no event shall notice be less than ten working days.

10. Budgetary Decisions: There may be times when budgetary or other limits require _____ to impose furlough days or otherwise to take actions that could adversely affect employees. In entering into this Agreement, the Employee acknowledges that she/he may also be subject to such actions.

11. Exclusive Agreement: This Agreement, including the exhibits appended hereto, is the exclusive statement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, proposals and awards, written and oral, relating to its subject matter; the parties expressly acknowledge that this Agreement is the product of mutual negotiations thereof; no provision of the Agreement may be changed, modified, or amended except by an Agreement in writing executed by both parties.

12. Accounts Which Will Determine Prospective Employee Eligibility for Hire:
(INCLUSIVE)

This above agreement is NOT in effect until ALL signature lines are completed.

PROSPECTIVE EMPLOYEE

DATE

COMPANY

DATE

29. MANAGING SUBCONTRACTORS AND INDEPENDENTS AS A SMALL BUSINESS FEDERAL GOVERNMENT PRIME CONTRACTOR

INTRODUCTION

Industry teaming is a fact of life in small business federal government contracting. Your team for a given contract pursuit may consist of several types of industry partners external to your organization.

If you are the business lead by virtue of teaming agreements that recognize your small business set-aside designation as the qualifier for leadership, you have a management challenge. That challenge involves issuing agreements and purchase orders to independent contractors as individuals and negotiating fully executed subcontracts with firms subcontracting to you.

The techniques in managing each of these partner types are distinct. The contractual and regulatory factors are introduced in the following link:

<http://www.smalltofeds.com/2010/07/what-is-small-business-federal.html>

This article will convey guidance for a small business federal government prime contractor, in managing the external business relationships with other companies as subcontractors and independents as individuals.

EARLY AND CAREFUL PARTNER SELECTION/TEAM MANAGEMENT

Finding industry teaming partners should occur synonymous with finding an opportunity. We have previously discussed marketing federal business opportunities:

<http://www.smalltofeds.com/2009/07/multiple-front-marketing-in-small.html>

<http://www.smalltofeds.com/2009/09/what-small-business-should-know-about.htm>

<http://www.smalltofeds.com/2009/05/small-business-teamiing-in-government.html>

Assuming you have located an industry partner or perhaps a mix of subcontractors and/or independent individuals you wish to engage, make sure they have the capabilities to perform the parts of the statement of work on the program you are targeting. Remember that the quality of your proposal, your probability of a win, and ultimately your past performance rating on the contract, will reflect your supplier management. The government will hold you accountable for their performance. In some cases agencies will reserve the right to approve your key personnel and subcontractors before issuing your prime contract.

Two general guidelines should be observed:

1. Do not subcontract in excess of 40% of the program to another company in terms of hours, dollars and % of total work scope. The FAR regulations specify 49% as a ceiling but it is best to reserve 60% of the effort for your company employees and independent contractors under your control to avoid appearances of a front.

2. Do not exceed 50% of the internal labor hours for your company share of the program with contractors as individuals. Government source selection boards need some assurance that the capability to lead and perform major parts of the program resides in the permanent party of the small business prime contractor.

If you exceed the 50% rule for independents, include contingent hire agreements demonstrating the point in time where they will become full time employees or will be replaced by full time employees. A contingent hire agreement may be downloaded from the Box Net References Cube in the left margin of this site.

Sign subcontractors and independents to proprietary data agreements.

Develop thorough teaming agreements with subcontractors, including an explicit statement of work attachment to each agreement quantifying, the work scope guidelines in paragraph 1, above. A teaming agreement is available for download in the Box Net references cube at this site.

The independent should also understand the specific work and hours he or she will be expected to perform on the job and such personnel should be retained on a contractor retention agreement which is also available for download in the Box Net References cube at this site.

Teaming agreements, contingent hire agreements, contractor retention agreements and subcontractor proposals must be either included in your proposal submission to the government or made available for government fact finding.

CONTRACT DOCUMENTATION AND TRANSITION FROM PROPOSAL TO CONTRACT

During the proposal stage of the business relationship with your industry partners you will be issuing them requests for proposals (RFP's) for their portion of the effort.

For independent contractors this may be as simple as asking them to sign contingent hire agreements or contractor retention agreements.

But you must include in the RFP's to the companies which you propose as subcontractors the terms and conditions of your agency prime contract RFP and other specific guidance to make the proposal and subsequent contracting process work smoothly. This should include administrative guidelines and agreed upon cost targets and technical guidance.

Specify a due date for their proposals in response to your RFP in time to roll their data

into your cost volume and provide guidance on the handling of fully loaded rate backup to which you do not have access to forward to the government auditors. This usually includes sealed packages provided by your subcontractors that you will not open, since they contain overhead and G&A rate information which is highly proprietary to the subcontractor.

Keep in mind that you are in a constant negotiation with these partners until you award them subcontracts to replace the teaming agreements when your team wins the program. Please see the following article for detail guidance on that point:

<http://www.smalltofeds.com/2007/03/small-business-federal-government.html>

Naturally the technical and management volumes of the proposal will be completed in consonance and in parallel with the subcontractor RFP cost proposal responses.

At contract award, be prepared to negotiate and execute formal subcontracts to the companies with whom you are teamed and to issue purchase orders to your independents to commence work. At that point you have achieved the contract baseline and you will commence work.

Insure that your subcontracts and purchase orders contain limitation of funds and funding exposure protection for all parties in accordance with the following article:

<http://www.smalltofeds.com/2007/09/limitatoin-of-funds-and-funding.html>

BASELINE MANAGEMENT

Please read the following article carefully on baseline management and bear in mind that work scope change sensitivity must be managed carefully and formally documented between you and your industry partners by change orders to formal subcontracts and purchase orders:

<http://www.smalltofeds.com/2009/08/contract-baseline-management-in-small.html>

SUMMARY

This article has provided an overview of subcontractor and independent contractor management from the early marketing stages of a contract pursuit through proposal preparation and submission then contract award and baseline management.

Please read the reference links in the text above carefully and check the table of contents at this site for other information relevant to this topic.

30. TECHNIQUES FOR PRODUCT DEVELOPMENT IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

INTRODUCTION

This article will suggest approaches in developing a product to the point where it can be marketed in the small business federal government contracting venue. Individuals usually succeed at such an endeavor by forming a company, separating it from their personal assets and then developing the company and its product(s); even if it is only a one-person operation at the start.

There are techniques for small business to gain government participation in growing an idea into a company. Small Business Innovative Research (SBIR) programs in all the major federal agencies seek concepts that can be funded and developed into products the government needs. Here are some examples:

<http://www.dodsbir.net/>

<http://grants.nih.gov/grants/funding/sbir.htm>

Service contracting is another form of gaining entrance into the market, creating opportunities for introducing products by selling skilled labor under a government agency service contract or prime contractor teaming arrangement.

A GSA schedule affords a platform for products, but sales must have been achieved historically in the commercial or government markets before applying because GSA relies heavily the most recent 2-year pricing data in negotiating a schedule.

The government contracting product venue is competitive and requirements by federal agencies are often bundled into larger systems procurements. Therefore, it is necessary first to position a small enterprise and its product offerings before tapping the federal market for development support.

GENERAL OVERVIEW

Product entrepreneurs all face the same challenges. Those who succeed recognize they need to visualize themselves in the product development business, structuring an enterprise, generating a business plan, protecting intellectual property and then seeking industry partners and investors to bring the product to market.

In the process, copyrights, patents and royalty issues may come into play and development and distribution agreements are formed. Pricing is finalized based on cost and expense projections and competitive factors unique to the company as negotiation results are achieved with industry teaming partners, developers, manufacturers and distributors.

Financing is always a factor and can be achieved through loans or investors with a good business plan. The remainder of this article will address the basic elements of a framework within which to succeed with your product development for federal government contracting.

BUSINESS STRUCTURE

For the majority of individuals who are starting single person or no more than 2 or 3 person operations, a Limited Liability Company (LLC) registered with the state and with the federal government is recommended.

It will separate personal assets from company assets and protect them. When product or services sales begin generating revenue an LLC has many tax advantages. It can be registered as Sub Chapter 'S' for tax purposes and revenue and the expenses can be passed through to personal tax returns, paying no taxes as a company. The double taxation issue prevalent with many of the other types of incorporation is avoided with a Sub chapter "S" LLC. An LLC assists in limits your personal liability for debt and court judgments that may not fall in your favor.

Representing the business as a company allows pursuing financing as an enterprise. You can think of a creative name for your LLC and you can complete the articles of incorporation necessary to bring your enterprise into existence. The term, "LLC" must conclude the name of your company if you decide to form such an organization.

Instructions for registering in your state and federally with the IRS are available at your state web site and at the IRS site. You will receive tax and employer identification numbers by registering your business.

PROTECTING INTELLECTUAL PROPERTY

Patents and copyrights for your idea may ultimately protect you to a degree but the government agencies granting them have no enforcement arm so you must discover a violation yourself, retain a lawyer, bring a court proceeding against a violator and then hope to recover your costs and a reasonable settlement if you win. Therefore, most of my clients with ideas such as yours use non-disclosure agreements (NDA's) in dealing with other companies. Teaming is a practical fact of life in pursuing the larger federal government contracts.

You can download an NDA from the “References” Box Net Cube at the following site:

<http://www.smalltofeds.com>

Fill in the blanks as appropriate for a given exchange with outside individuals and companies. Before you meet to disclose details with a potential teaming company or investor, for instance, ask them to sign the document with you up front, put a serial number on it and reference the serial number and the agreement and date on any written materials you give to them.

After the meeting draft a short letter, documenting the minutes of the meeting, what was discussed and stating that the verbal disclosures and materials in the meeting are subject to the agreement and reference the agreement by number and date. Put an acknowledgment line on the letter and ask them to return a signed copy to you. This confirms their receipt of your proprietary information and their agreement to protect it in accordance with the NDA.

There are certain exceptions with regard to individuals or companies you may be dealing with on investing where you may not choose to use an NDA. Some Angel and Capital Investors are sensitive about being asked to sign them. You will have to trade their objections off against the value they represent to your company and conduct your risk analysis on a case-by-case basis.

For detail information asserting rights in technical data and software to government agencies and protecting intellectual property with other companies please see the following article:

<http://www.smalltofeds.com/2008/09/protecting-intellectual-property-and.html>

BUSINESS PLANNING

Visit the SBA website on business planning. There are major topics in the business planning process which, when addressed in a plan, will insure the success of your enterprise and assist you in determining and supporting the amount of funding you need. Such topics as marketing, advertising, competitor analysis and financing are covered there. You will find a presentation and examples that you can follow in improving your plan or in generating a plan if you do not have one. The link to the site is below:

<http://www.sba.gov/smallbusinessplanner/plan/writeabusinessplan/index.html>

Articles on strategic planning and developing your marketing plan are also at the “References” Box Net Cube at this site. They address evolving an operations vision for your enterprise showing its potential to present to a banker or to an investor.

Here is a site with free business plan samples:

http://www.bplans.com/sample_business_plans/all_plans.cfm

It may assist you in visualizing your own business growth to look at an example of how someone else addressed a given topic. I have learned from having worked with many new business owners that it is best to have you examine the material and continue your plan, contacting me with issues and questions as they occur.

THINGS TO THINK ABOUT WHILE PLANNING

Locate teaming companies to further the objective that they would market your product as part of their offerings with your company licensing and sharing in the proceeds.

A business plan and the guidance above for its generation is the road map for developing ideas, laying out how to expand the sales of your product and researching your market to do so. It will also assist in developing pricing to considering the direct costs of product development, service implementation and distribution as well as the indirect costs of the enterprise itself (operating expenses).must be considered and financed.

A negotiation position for a given product will be driven by certain strategic factors:

1. Does a developer or teaming partner have a strong but realistic incentive to actively make the product a part of the marketplace?
2. Does market research indicate the idea will have strong sales volume once it is developed and distributed?
3. How much will a prospective teaming partner or investor have to invest in the product to get it to market? Does the product require testing?
4. Which is the better deal? Is it better to receive a 7% royalty on \$5,000 worth of sales or a 1% royalty on \$500,000 of sales? Even though 1% does not sound too impressive, of course it's the better choice in this example.

A negotiation position should be based on support by for the argument that a concept will experience a certain level of sales and the royalty should be based on a % of estimated end user volume sales, discounted for the investment that the developer and distributor must make to get it to market.

The royalty should be outside of the distributor cost breakdown and the end user cost breakdown. It is simply a deductive factor the manufacturer will have to introduce into their profit equation after the costs have been tabulated. They should not view royalties as a cost factor; they should view them as a share of the profit on the total estimated sales.

Chances of succeeding with a negotiation with a developer and/or distributor are increased by showing understand the prospective market for the product and drawing some comparisons between the product and other similar successful products.

Naturally there will be some give and take with the other side about estimated costs to get the product to market. Be forthright in acknowledging their investment but also support a position with some research and comparative data on the product potential.

Lastly, settle on a % of the end user sales volume based on an estimate to which is agreed with the other party and insures that the purchase agreement for royalties entitles the agreed upon % on all future sales.

FINANCING

SCORE has a cooperative agreement with the SBA to assist prospective business owners in completing sound business plans, which can then be presented to a banker in applying for financial assistance.

In the event that 2 banking institutions deny a loan application, a candidate can apply to the SBA for a loan guarantee that may assist in achieving a loan, since it would back up the application to a bank.

Loan officers are interested in a business plan to get a view of the business future and place a value on products and services based on the market, the competition, the sales projections, costs, expenses and profit expectations. The link to the SBA loan guarantee program is below:

<http://www.sba.gov/services/financialassistance/index.html>

Veterans have access to small business loans via the Patriot express program:

<http://www.sba.gov/patriotexpress/>

ANGEL AND CAPITAL INVESTORS

Angel and private investors have two prominent characteristics:

- (A) They want a high return on investment (ROI)
- (B) They typically want a great deal of control of the operation.

According to the Colorado Capital Alliance, surveys of angel investors show that:

1. Angels are seeking companies with high growth potential, proven management and sufficient information about the company, its management team, and its market to be able to assess a company's value.
2. On average, Angels expect 10 to 15 percent above of the S&P 500 return on equity.
3. Typically, Angels invest in companies seeking between \$50,000 and \$1,000,000.
4. Angels generally prefer to finance manufacturing or product-oriented ventures, especially in the high-tech fields.
5. On average, Angels are 47 years old, have a postgraduate degree, and management experience in an entrepreneurial venture.

An angel investor may ask for at least ten to twenty times return in just five years. For many angel investors, it's not just about the money; they want to actively participate in developing your business. They want to act as a mentor and sometimes even to take an active role in managing the company. This often translates into the angel investor having a seat on the company Board of Directors.

Angels are also highly interested in an exit strategy from for a full return on their investment in your business. The closest thing to it is an astute business plan that calls out the specifics of potential ROI, based on sound planning and analysis and addresses the following as possible exit strategies. Remember, investors are very aware that an exit strategy cannot be guaranteed. But they can be offered more than the wishful thinking that an IPO will occur in three years.

It is always good to have a lawyer involved in complex documents or in the development of documents. This will further protect a concept. A lawyer does not necessarily have to be present during the exchanges with prospective companies, but a lawyer review and comment on documents before they are signed.

SUMMARY

This article has conveyed preliminary steps for the small business in product development for the federal marketplace.

It should be noted that much of the process discussed in this article is the same for the commercial product development and a certain amount of commercial success is usually achieved before selling products in the government contracting venue. The exception to that rule is in highly technical product pursuits where the government is funding advanced development.

To consider non-profit grants and direct government contract funding potential please see the following article:

<http://www.smalltofeds.com/2010/01/small-business-government-grants-versus.html>

Once a company is formed, a product platform established and a position to market a useful product to the federal government is achieved, please see the following articles at this site in developing a marketing plan

<http://www.smalltofeds.com/2006/12/registering-your-small-business-for.html>

<http://www.smalltofeds.com/2009/07/multiple-front-marketing-in-small.html>

<http://www.smalltofeds.com/2009/01/should-you-consider-small-business.html>

<http://www.smalltofeds.com/2009/05/small-business-teamiing-in-government.html>

With careful structuring, planning and marketing, a product with potential can find its place in federal government contracting.

31. FEDERAL GOVERNMENT CONTRACT FORMAT

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE OF PAGES	
2. CONTRACT NUMBER		3. SOLICITATION NUMBER		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED	
6. REQUISITION/PURCHASE NUMBER		7. ISSUED BY		CODE		8. ADDRESS OFFER TO (If other than Item 7)	
<p>NOTE: In sealed bidsolicitations "offer" and "offeror" mean "bid" and "bidder".</p> <p style="text-align: center;">SOLICITATION</p> <p>9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ local time _____ (How) (Date)</p> <p>CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section I, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.</p>							
10. FOR INFORMATION CALL:		A. NAME		B. TELEPHONE (W/O COLLECT CALLS) AREA CODE NUMBER EXT.		C. E-MAIL ADDRESS	
11. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					
OFFER (Must be fully completed by offeror)							
NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.							
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.							
13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-B)		TO CALENDAR DAYS (%)		20 CALENDAR DAYS (%)		30 CALENDAR DAYS (%)	
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):		AMENDMENT NO.		DATE		AMENDMENT NO.	
15A. NAME AND ADDRESS OF OFFEROR		CODE		FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
15B. TELEPHONE NUMBER AREA CODE NUMBER EXT.		15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.		17. SIGNATURE		18. OFFER DATE	
AWARD (To be completed by Government)							
19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION			
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> TO U.S.C. 2304(c)) <input type="checkbox"/> 41 U.S.C. 253(c) ()				23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)		ITEM	
24. ADMINISTERED BY (If other than Item 7)		CODE		25. PAYMENT WILL BE MADE BY		CODE	
26. NAME OF CONTRACTING OFFICER (Type or print)				27. UNITED STATES OF AMERICA (Signature of Contracting Officer)		28. AWARD DATE	
<p>IMPORTANT: Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.</p> <p>AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is unusable</p> <p style="text-align: right;">STANDARD FORM 33 (REV. 9-97) Prescribed by GSA - FAR (48 CFR) 53.214(c)</p>							

FEDERAL GOVERNMENT CONTRACT FORMAT

FAR 15-204-1 specifies a uniform contract format for federal government contracts. You have encountered this format during the RFP stage of your procurement since the government is required to utilize it in structuring the request for proposal (RFP), leaving blank those items, which are subject to negotiation such as final contract pricing. Your contract is divided into four parts, with various sections within each part. Prime contractors issue subcontracts flowing down terms and conditions, pricing and other topics in an identical format.

Like any other contractual document in the business world, the quality and content of this format will vary by agency and with the experience and knowledge of the contracting officer and the government administrative and technical support personnel preparing it or the prime contractor. It behooves your small business to examine the contents, research the appropriate sections of the FAR that may govern them and review them as commitments to which your organization can conform and perform before you sign your contract.

The following is a listing of the items making up this format with a brief description of the contract parts and sections and some tips regarding each from a project management perspective.

PART I - THE SCHEDULE

SECTION A - SOLICITATION/CONTRACT FORM

Standard Form 33 or Optional Form 308 are the most common formats utilized by government agencies. These forms contain the following:

Name, Address, and Location of Issuing Activity, Including Room and Building.

Contract Number/Modification or Revision Number

Date

Request for Proposal (RFP) Number

Number of pages

Requisition or Other Purchase Author

Brief Description of Item or Service

Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and electronic address (including facsimile address), if appropriate

Other Agency-unique data such as priority ratings, security classification and similar data

Signature blocks for the government and the contractor at contract

Section B - SUPPLIES OR SERVICES AND PRICES/COSTS

This is a listing by contract line item of the negotiated products or services and the prices for them in your contract. This section is very critical for billing purposes in your accounting system. Invoices to the government for supplies or services delivered must reference the items and all detail for the items contained in this section. Government requisition and appropriation data are contained in the contract line item detail and are carried throughout the government finance and accounting systems, to include the operations that make payment on your invoices.

SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

Perhaps the most critical section of the contract in terms of technical performance, this section describes the work to be performed and references requirements for the end product, including product performance. A tight, thorough statement of work (SOW) is the key to a well-understood relationship with your COTR, who will approve your performance against the SOW and sign off on your billings and invoices based on said approval. The SOW contains the benchmarks for defining the baseline effort required for the current contract price. One of the highest risks in government contracting is performance outside the statement of work, either due to a very general and loose SOW or by taking direction for added scope from government representatives without getting a contract change order modifying the SOW and increasing the price of the contract.

SECTION D - PACKAGING AND MARKING

With the vast amount of procurement the U.S. Government performs and the many locals to which the government directs shipments, it is necessary to specifically establish specifications for packaging and identification of products. The government considers this information important enough to establish a separate contract section for it. Your company should closely examine and comply with the instructions therein.

SECTION E - INSPECTION AND ACCEPTANCE

This section identifies the government criteria for an acceptable product under your contract and the methodology that will be utilized by the government to perform inspection to insure the product quality. In many cases a specification will be called out. The place of delivery will also be specified.

SECTION F - DELIVERIES OR PERFORMANCE

A discrete schedule by contract line item will be contained in this section. Requirements for time, place and method of delivery or performance will be specified.

SECTION G - CONTRACT ADMINISTRATION DATA

This section will contain required accounting and appropriation data and any contract administration information or instructions other than those on the contract form. It will specify your payment address if it is different than your company street address.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

Special contract requirements that are not included in Section I, Contract Clauses, or in other sections of the uniform contract format will be specified in this section.

PART II - CONTRACT CLAUSES

SECTION I - CONTRACT CLAUSES

This section includes the clauses required by law or by this part and any additional clauses if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex. The index normally makes reference to FAR clauses, or FAR Agency Supplements. Below is an index of the FAR and FAR Agency Supplement web sites to which you may direct your attention, depending on the agency with whom you are doing business. The FAR Agency Supplements are intended to support the FAR by applying overall FAR guidance with specific agency details regarding implementation:

Federal Acquisition Regulation

<http://www.acquisition.gov/comp/far/index.html>

Agriculture (AGAR)

<http://www.usda.gov/procurement/policy/agar.html>

Air Force (AFFARS)

<http://www.farsite.hill.af.mil/vfaffar1.htm>

Army (AFARS)

http://www.army.mil/usapa/epubs/pdf/p70_3.pdf

Army Corps of Engineers (EFARS)

<http://www.usace.army.mil/inet/usace-docs/army-reg/>

Defense (DFARS)

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

Education (EDAR)

[http://www.ed.gov/policy/fund/](http://www.ed.gov/policy/fund/reg/clibrary/edar.html)

[reg/clibrary/edar.html](http://www.ed.gov/policy/fund/reg/clibrary/edar.html)

Energy (DEAR)

<http://professionals.pr.doe.gov/ma5/MA-5Web>.

Housing (HUDAR)

<http://www.hud.gov/offices/cpo/hudar.cfm>

Interior (DIAR)

<http://www.doi.gov/pam/aindex.html>

Justice (JAR)

<http://www.usdoj.gov/jmd/pss/>

[jarinet.htm#2801](http://www.usdoj.gov/jmd/pss/)

Labor (DOLAR)

<http://www.dol.gov/oasam/regs/cfr/48cfr/>

[toc_Part2900-2999/Part2900-2999_toc.htm](http://www.dol.gov/oasam/regs/cfr/48cfr/)

NASA (NFS)

<http://www.hq.nasa.gov/office/>

[procurement/regs/nfstoc.htm](http://www.hq.nasa.gov/office/)

Navy (NAPS)

<http://www.abm.rda.hq.navy.mil/>

[aosfiles/tools/NAPS/naps/](http://www.abm.rda.hq.navy.mil/)

Nuclear Regulatory Commission (NRCAR)

<http://www.nrc.gov/who-we-are/>

[contracting/48cfr-ch20.html](http://www.nrc.gov/who-we-are/)

Prisons (BPAP)

<http://www.bop.gov/business/acquisition.jsp>

State (DOSAR)

<http://www.statebuy.state.gov/>

[dosar/dosartoc.htm](http://www.statebuy.state.gov/)

Transportation (TAR)

<http://www.dot.gov/ost/m60/tamtar/tar.htm>

Treasury (DTAR)

<http://www.treas.gov/offices/management/dcfo/procurement/>

Veterans Affairs (VAAR)

<http://www1.va.gov/oamm/elibrary/policy.htm>

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

This section lists the title, date, and number of pages for each attached document, exhibit, and other attachment. The government may include documents that clarify or further define the contract. A commonly attached item is the DD Form 1423, "Contract Data Requirements List", that specifies for all data deliverables the Data Item Descriptions (DID's) and their delivery schedules. Lists of government furnished property in support of contractor performance on the contract are contained in this section if such equipment is provided.

PART IV - REPRESENTATIONS AND INSTRUCTIONS

SECTION K - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS

The federal government requires the contractor to certify to certain statements in bidding and performing government contracts. These signed documents become a part of your government contract when it is executed. Many of these "Certs and Reps", as they are commonly called, establish compliance with conflict of interest laws and establish the identity of the contractor by specifying information unique to the company such as NAICS Codes, CCR registration numbers, D&B Numbers, CAGE Codes and similar data. Minority-Owned Business and HUB Zone Business certification numbers are specified in this section, together with other small business self-certifications, such as Woman-owned, Veteran-Owned or Disabled-Veteran-Owned designations. Certain representations regarding sources for raw materials may also be required in Section K together with other agency-unique certifications such as facility and security officer information, security classification data and the like.

With the advent of internet use for record retention, the federal government now requires that contractors maintain certain standard certifications and representations at a government web site and update them annually for any changes:

<https://orca.bpn.gov/>

You should establish and maintain your "ORCA" certs and reps, update them whenever necessary and insure that signed, paper copies of them are included in all your proposals for new work and in your contracts to the government.

32. CONTRACT LINE ITEMS - THE HEART OF YOUR FEDERAL GOVERNMENT CONTRACT

Contract Line Item(s) (CLIN) specify products or services being procured and the negotiated prices for them. Housed in Section B of your contract, the CLIN is critical for reporting and billing purposes in your accounting system. Invoices to the government for supplies or services delivered must reference the associated CLIN. For service contracts that are cost-based such as Time and Materials (T&M) or Cost Plus and for progress billings under fixed price contracts, your job cost accounting system must be able to track labor, material and other direct costs at the CLIN level or below to provide auditable details for payment approval.

Government requisition and appropriation data against the CLIN are carried throughout the government finance and accounting system that makes payment on your invoices. CLIN's form the backbone upon which all the other contract sections are built. If the CLIN structure is defective, it is likely many other areas of the contract will also be deficient.

During the "Sources-Sought", "Pre-solicitation" or "Draft RFP" stages of a procurement the government often invites industry to comment on the evolving solicitation. The CLIN structure should be evaluated in relation to such items as the Work Breakdown Structure (WBS), the Statement of Work (SOW) and the contract schedule from the perspective of visualizing the work underway, tracking and reporting the status and finances of deliverables, inspection and acceptance and accurately billing the deliveries on invoices.

If the agency is establishing a poorly integrated CLIN structure you should comment appropriately to the contracting officer, suggesting corrections and additions to establish a framework against which your enterprise can estimate effectively, operate efficiently, report accurately and bill without experiencing delays. Most agency contracting shops appreciate such contributions.

This article will discuss Section B CLIN relationships to other critical elements of your contract and site matters of consistency that should be carefully reviewed and considered before proposing, accepting and signing your deal.

SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

As you read the narrative in this section, carefully establish that it adequately covers all the CLIN's in Section B. During the proposal process it is wise to matrix each paragraph of the SOW to its associated CLIN so you are sure your CLIN level prices have adequately covered the scope described in the SOW and that the SOW addresses each of the CLIN's identified in Section B. If there appear to be omissions point them out. Note where the SOW conflicts with or does not adequately describe the applicable CLIN's in Section B. Also note where there may be missing CLIN's. Then offer either a revision to the CLIN structure, a revision to the SOW, or both.

SECTION D - PACKAGING AND MARKING

Insure that the instructions in this section cover each of the CLIN's in Section B and that your company can comply with any specifications referenced.

SECTION E - INSPECTION AND ACCEPTANCE

Review the criteria for accepting the products and services to be delivered by CLIN as well as the location where deliveries will take place. Insure your company can comply with the criteria for acceptance. A payment will not be made without government acceptance of your delivery.

SECTION F - DELIVERIES OR PERFORMANCE

This section will replicate Section B and specify the due dates for deliveries by CLIN. Insure you can comply with the dates indicated.

SECTION G - CONTRACT ADMINISTRATION DATA

The accounting and appropriation data in this section must be replicated where necessary in your bill to the government by CLIN. Please see the article at this blog entitled, "Government Contract Billing":

<http://smalltofeds.blogspot.com/2008/06/small-business-federal-government.html>

SECTION H - SPECIAL CONTRACT REQUIREMENTS

Check for any special requirements, such as Earned Value Management Systems, the requirement for a Work Breakdown Structure against which to report cost and schedule data and other clauses such as Design to Cost/Life Cycle Cost, Reliability, Safety and Failure Analysis reporting requirements and similar specifications. If you find such requirements, carefully review the reporting structure therein for consistency with the CLIN structure of the contract and point out any disparities to the Contracting Officer.

SECTION I - CONTRACT CLAUSES

Carefully review this section in the same manner as Section H.

SECTION J - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

The Contract Data Requirements List (CDRL) will be in this section. Insure there is a separate CLIN for data items. Most contracts price data at zero cost and include the cost to prepare the data in other CLIN pricing. Determine which of the CLIN's will be affected by the data items required in this section and insure the pricing for those CLIN's includes that cost. Perform an identical review of any other documents contained in this section.

SECTION K - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS

Insure that all information provided in this section is consistent with the data specified in each of the sections above.

SUMMARY

By conducting a thorough review of the CLIN structure against all other sections of your prospective contract you will establish a consistent framework and an integrated approach to tracking and reporting the status and finances of deliverables, inspection and acceptance of same and billings that will be promptly paid.

The following is an example of a typical federal government contract CLIN structure:

SECTION B - SUPPLIES OR SERVICES AND PRICES

ITEM NO SUPPLIES/SERVICES

0001 SBIR RESEARCH AND DEVELOPMENT

Firm Fixed Price

The contractor shall perform research and development efforts in accordance with Section C and the Contractor's SBIR Phase I proposal dated September 2002 in response to SBIR Topic N02-140

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0001AA Monthly Status Report 1 LOT \$11,000.00

The contractor shall perform research and development efforts and provide the First Monthly Status Report in accordance with CDRL AO01.

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0001AB Monthly Status Report 1 LOT \$11,000.00

The contractor shall perform research and development efforts and provide the Second Monthly Status Report in accordance with CDRL A001

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0001AC Monthly Status Report 1 LOT \$11,000.00

The contractor shall perform research and development efforts and provide the Third Monthly Status Report in accordance with CDRL A001.

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0001AD Monthly Status Report 1 LOT \$11,000.00

Phase 11 Program plan

The contractor shall perform research and development efforts and provide the Fourth Monthly Status Report in accordance with CDRL A001 and the Phase 11 Program Plan in accordance with CDRL. A002.

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0001AE Monthly Status Report/ 1 LOT \$11,000.00

Preliminary Report

The contractor shall perform research and development efforts and provide the Fifth Monthly Status Report in accordance with CDRL A001 and the Phase I Preliminary Report in accordance with CDRL A003.

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0001AF Contract Summary 1 LOT \$13,587.00

Report

The contractor shall perform research and development efforts and provide the Phase I Final Report in accordance with CDRL A004.

CLIN 0001 TOTAL \$68,587.00

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0002 DATA 1 LOT *NSP *NSP

DELIVERABLES

Firm Fixed Price

The contractor shall provide the data deliverables in support of CLIN 0001 in accordance with attached CDRLs.

- Not Separately Priced

ITEM NO SUPPLIES/SERVICES

0003 OPTION CLIN

SBIR RESEARCH AND DEVELOPMENT

Firm Fixed Price

The contractor shall perform research and development efforts in accordance with Section C and the Contractor's SBIR Phase I proposal dated September 2002 in response to SBIR Topic N02-140.

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0003AA Monthly Status Report 1 LOT \$9,000.00

The contractor shall perform research and development efforts and provide the First Monthly Status Report in accordance with CDRL A001.

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0003AB Monthly Status Report 1 LOT \$9,000.00

The contractor shall perform research and development efforts and provide the Second Monthly Status Report in accordance with CDRL A001.

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0003AC Contract Summary 1 LOT \$11,490.00

The contractor shall perform research and development efforts and provide the Phase 1 Final Report in accordance with CDRL A004.

CLIN 0003 TOTAL \$29,490.00

ITEM SUPPLIES/SERVICES QUANTITY UNIT UNIT PRICE AMOUNT

NO

0004 OPTION CLIN 1 LOT *NSP *NSP

DATA

DELIVERABLES

Firm Fixed Price

**The contractor shall provide the data deliverables in support of
CLIN 0003 in accordance with attached CDRLs.**

*** - Not Separately Priced**

CLINS 0001 - 0004 TOTAL \$98,077.00

33. CONTRACT STATEMENT OF WORK AND TECHNICAL SPECIFICATIONS ARE VITAL DOCUMENTS

Part 1, Section C, is where the technical specifications and statement of work are located in your contract. It is vitally important to manage these documents with your agency customers.

Without a well written Statement of Work (SOW) and associated supplies and services specifications there is unacceptable risk in your contract. Both the contractor and the government must come to an understanding regarding the scope of effort to be performed. That understanding is conveyed in the SOW and confirmed in the specifications referenced therein. A good SOW should have the following principal attributes:

- * Clear identification of the products, services, skills, materials and performance factors required to complete the contract
- * A description of the conditions under which the contractor will be required to perform and any related environmental or location factors
- * Specific references to product specifications that govern an acceptable product or services performance outcome and delivery acceptance
- * A schedule for the contract that identifies discrete delivery dates for products and specific start and end dates for supporting labor.
- * A precise description of government furnished material or facilities required and when it will be made available to the contractor.

If your customer does not provide the above in the contract SOW offered in Part 1, Section C or your contract, offer a revision to the document during negotiations that represents a version to which your company will commit. Signing off on a poorly written SOW results in a difficult contract to manage and a high probability for disputes during the performance period.

34. CONTRACT DATA REQUIREMENTS LIST (CDRL)

The Contract Data Requirements List (CDRL) is usually contained in Part III, Section J of your contract. The CDRL is a register of the deliverable data items. Each data item has a discrete numeric identifier, a data item description (DID) number and a delivery schedule to the customer. The CDRL is commonly conveyed on DD Form 1423 by the Department of Defense (DOD) specifying the delivery address, number of copies required and the reviewing and approving authority for the data item within the government agency. The CDRL also specifies electronic addresses if electronic data delivery is necessary. Forms other than a DD Form 1423 may be used to convey data item requirements by agencies outside DOD. That form may be as simple as a listing of requirements. You should review the listing to insure adequate definition and understanding exist for you to commit to the data requirements when you sign your contract. Data Item Descriptions (DID's) are available at:

<https://assist.daps.dla.mil/quicksearch/>

Although it is unusual to negotiate separate pricing for contract data, your negotiated contract and resulting budget baseline must contain the resources to prepare and submit these items. On contracts for new products, data item submissions represent major benchmarks on the contract schedule. Results of study, research, engineering design and development are submitted in the form of data items to the government for approval. Once approved, these items form the specifications for continuing effort on the contract. Key design reviews on development programs are focused on the contents of data item submissions.

Data item submissions contain reports of contract cost and schedule performance, results of status meetings and records of ongoing deliveries. Data item deliveries are key factors in demonstrating successful performance under the contract.

In some instances, the number of data items and the level of detail in each are negotiable with the government. Such negotiations have a direct impact on cost even though data items are not normally priced separately in the contract. The cost for data item preparation and submission is usually included in the pricing in Section B of the contract within the prices for contract line item deliverable to which the data items apply.

35. SMALL BUSINESS FEDERAL GOVERNMENT CONTRACT NEGOTIATION

I. INTRODUCTION

You have worked to establish your federal government contract business contacts. You have developed your company infrastructure and processes to accommodate the Federal Acquisition Regulation. Your company has effectively marketed and teamed on a prospective program. A proposal has been carefully prepared and submitted to the contracting officer. You have been selected as the apparent winner and you are ready for the next phase on the government contracting process - the negotiation. This article assumes that you are in the federal government services contracting business, that you plan to price your services at an hourly rate and sell them by labor categories with professional job descriptions to perform the government's statement of work and bill by the hour. This article also assumes that you are not contracting under FAR Part 12, "Commercial Contracting".

Unlike commercial business, the vast majority of government contracts are subject to negotiation. Even in competitive procurements, the government may award a contract based on best value (a combination of technical, cost and other factors) not necessarily to the lowest price bidder. The final price paid by the government is then subject to negotiation. Under General Services Administration (GSA) Schedules and Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts, terms and conditions and labor hour pricing are agreed upon in advance but individual delivery orders are negotiated separately regarding the labor hours, material and travel cost necessary to complete a discrete scope of work. Cost Plus and Time and Material contracts are also negotiated procurements on many occasions. Only small, fixed price purchase orders under \$25,000 and items purchased under FAR Part 12, "Commercial Contracting", are awarded solely on the basis of price.

This document will address contract negotiations under three (3) different business scenarios:

Negotiations directly with a government contracting officer pursuant to a federal government contract

Negotiations with a prime contractor for a subcontract under the prime's federal government contract

Negotiations with a subcontractor to establish a price and flow down the terms and conditions of your contract with the federal government.

II. NEGOTIATION TEMPLATE

In federal government contracting each of the above scenarios pass through the following template of negotiation steps:

- A. Audit
- B. Fact-finding
- C. Pre-award Survey
- D. Cost Negotiations
- E. Final Profit Negotiations
- F. Contract Award

The above template is recognized throughout the Federal Acquisition Regulation (FAR) and in the Defense Contract Audit Agency (DCAA) Handbook. All government agencies and contractors utilize it.

III. RULES OF THUMB

Your proposal represents an initial offer to a government agency or a prime contractor. Correspondingly, a subcontractor's proposal represents his initial offer to you. Government contract and subcontract negotiation is an art, not a science. You will find the above negotiation template is applied with various degrees of expertise among government agencies, prime contractors and subcontractors. Like many other aspects of business, the intellect and experience of customer or supplier personnel will vary with the agencies and the companies with whom your are dealing.

Keep in mind that your client or your subcontractor is also developing his/her position against the above template. Confirm with the other party at which step the negotiation is located and the fact that the negotiation is moving from one step to the next. If you are dealing with an agency or company representative who is unfamiliar with the process, take the time at the beginning to convey in a tactful manner your understanding of how the negotiation will proceed. Keep a careful written record of events during each step, to include information provided, offers and counter-offers made and agreements reached.

Develop a negotiation with a "target" position and a "floor" position. Your objective is to conclude the negotiation achieving a price as close to the target position as possible while never going beneath the floor.

Courtesy and politeness are mandatory. Avoid confrontations. Do not reveal your strategy in front of the other party except to objectively explain your position in terms of an incremental offer or a counter offer. Excuse yourself for outside caucuses or adjournments whenever it is necessary to study an offer, assess a situation or develop your next move.

It is always best to look at negotiations from a win/win perspective. Be honest and forthright during the audit, fact-finding and site survey steps. Look for insights into the other party's negotiation position from the questions being asked, the data being requested or the responses being obtained. Defend your cost and performance position as conveyed in your proposal with documented facts. Look for openings in your subcontractor's proposal support documentation. When cost and profit negotiations commence, offer compromises and trade-offs of value to the other party in return for acceptance of your position.

IV. NEGOTIATIONS DIRECTLY WITH A FEDERAL GOVERNMENT CONTRACTING OFFICER

Procurement Contracting Officers (PCO's) hold warrants to represent the federal government. PCO's must have internal approval of a contract within their respective agencies before they can sign a contract. Only a PCO is authorized to officially commit the government. For smaller contracts a PCO may delegate his authority to an Administrative Contracting Officer (ACO). This often occurs in larger industrial plants where the ACO is resident in the facility or in remote locations where the ACO is a member of the Defense Contract Management Area Office (DCMAO) in the city where the contract is being performed.

A. **Audit** - Upon receipt of your proposal the contacting officer will order a Defense Contract Audit Agency (DCAA) audit. The Request for Proposal (RFP) to which you responded may in fact have ordered a copy of your proposal be submitted to the DCAA Office nearest your location. If you are a new supplier to the government, DCAA may ask for a copy of your long-range plan containing your direct and indirect rate structure. They will verify the rates utilized in your proposal against your LRP, evaluate escalation factors utilized for long term projects and check the math. The auditor will ask for copies of major material and travel quotations and insure that government per diem rates are utilized for lodging and meals in the cost proposal. DCAA may also visit your facility and complete a "Pre-award Survey of Prospective Contractor Accounting System" form. The survey checks compliance with Cost Accounting Standards 401 and 402 to insure that the company sets up each new government contract on job cost accounting in the identical manner in which it was proposed; in effect identifying direct labor, direct material and other direct costs to each contract monthly and allocating overhead and G&A utilizing the same numerator and denominator relationships upon which the contract was originally estimated. DCAA is paid by the PCO to perform the audit. The audit does not extend to negotiations and at the audit conclusion the auditor files a report with the PCO. The report will contain information on any errors uncovered

and findings on the adequacy of the accounting and long range planning systems. DCAA will not express an opinion on the cost content of the proposal in terms of a value judgment regarding prices for prospective supplies and services. If the auditor does not offer an exit interview, ask for one. Better yet, ask for a copy of the audit report to the PCO. Many DCAA offices will provide a copy to audited contractors. DCAA does not have the authority to direct a proposal revision based on audit findings. An astute contractor will immediately correct any errors found by the auditor in the proposal and examine other audit findings in preparation for negotiations.

B. Fact-finding - Assuming your proposal met the requirements specified in the RFP, fact-finding usually involves the PCO or his ACO requesting additional information. These areas of interest are early indications of where the negotiator is looking for weaknesses in your cost justifications or disconnects between your technical approach and the cost you are estimating to do the job. If you have subcontractors or major material suppliers, the government may ask for copies of your vendor proposal evaluations. The government may wish to examine cost history for the last time you performed similar efforts. Keep in mind that most government agencies put together an independent cost estimate of what they feel the item or service should cost. These are commonly called "Should Cost Estimates". The additional requests for information during fact finding are feeding the should cost. The PCO typically has an end user for the product or service who will become the Contracting Officer's Technical Representative (COTR) when the contract is awarded. The COTR has a strong influence on the negotiations and will usually be present when negotiations commence. On many occasions, the COTR is the real internal customer at the agency. He has fiscal, technical and schedule responsibilities to his management for the program you are servicing. He simply cannot sign for the government. The PCO has the agency warrant for that function and knows the most about public law and the Federal Acquisition Regulation (FAR) as it is applied to contracts the agency undertakes. It is the COTR who is likely feeding the PCO requests for fact-finding data. Keep in mind that the COTR and the PCO are formulating their assessment of the cost and the risk associated with the program during the fact-finding process. Cost is the first item of negotiation and risk has a direct influence on the government's position on profit.

C. Pre-award Survey - A pre-award survey is an extension of fact finding in the form of a visit to a new supplier's facility. The PCO or the ACO and the COTR usually attend. In some instances the local Defense Contract Management Area Office (DCMAO) is involved. As you become a regular supplier to an agency, site survey visits will normally cease or occur only rarely. The site survey team is interested in establishing the physical presence of a new supplier, the technical capability and the human resources to perform the prospective work and the quality of the environment in which the effort will be performed. A "Pre-award Survey of Prospective Contractor" Form is completed and becomes part of the contract file. Select the person who will meet with the government survey team. This person should be empowered to speak for the company and should be completely familiar with details of the solicitation and of your company's offer. If relevant, make available one or more technicians to answer questions.

Identify any disparities that may exist between the solicitation and your company's offer that should be resolved during the initial meeting with the survey team. Think about how you can demonstrate actual technical capability or the development of technical capability on the proposed contract. Make sure your plant facilities and equipment are available and operable. If they are not, be prepared to demonstrate that they can be developed or acquired in time to meet proposed contract requirements. Make sure that your labor resources have the proper skills or that personnel with the needed skills can be hired expeditiously. Gather and make available to the survey team documentation, such as previous government contracts or subcontracts or commercial orders, to demonstrate a past satisfactory performance record with regard to delivery, quality and finances. Gather financial documentation for the team financial analyst, including the company's current profit and loss summary, balance sheet, cash flow chart and other pertinent financial information. Make sure the plans are in place for vendor supplies and materials or subcontracts to assure that the final delivery schedule can be met. Make sure that these plans are verifiable. Review any technical data and publications that may be required under the proposed contract and make sure you understand them. If the contract is a type other than a firm-fixed price or if you have requested progress payments, prepare adequate accounting documentation for review. Review your quality control program and make sure that it is workable and consistent with the quality requirements stated in the contract.

D. Cost Negotiations - At the conclusion of audit, fact-finding and pre-award survey steps, the PCO and the COTR complete their should cost and open negotiations. They may make a counter offer to your price proposal at this time. Such a counter-offer reflects the government's initial position on cost and a reasonable profit. Assess how far from your negotiation target the counter-offer is and how close to your floor the government wants to take you. In the vast majority of cases you and the government determine that further negotiations are necessary. The profit issue is set aside and negotiations commence on the elements of cost, comparing the government's position to yours. This is perhaps the most important step in negotiations, since fully loaded cost makes up the vast majority of the prospective contract price. The parties address each direct and indirect cost element and factor in the cost proposal and attempt to come to an agreement on the total cost for the contract. As agreement is reached the government will adjust their cost to reflect the agreed upon amounts. You will do the same. The following discussion will address cost elements least and most likely to undergo negotiation and the associated reasons:

Cost Elements Least Subject to Negotiation

(1) Direct Labor Rate - The contractor can supply cost history, salary surveys or other documentation to support direct labor rates.

(2) Labor Overhead & Material Handling Rates - DCAA has reviewed the company forward pricing rates

(3) G&A Rates - DCAA has reviewed the company forward pricing rates

(4) Direct Material Cost - The contractor can supply vendor quotations and demonstrate competitive bidding

(5) Travel Costs - The contractor can supply airline and rental car quotes and government per diem rates are used for lodging and meals

(6) Terms and Conditions - All clauses required by the government and public law were contained in the RFP when the solicitation was provided for contractor response. In a competitive environment very few contractors take exception to these requirements. However, if the procurement is a HUB Zone or 8(a) Set aside to your company there may be certain terms which the government is willing to negotiate. The FAR is written for protection of the contractor as well as the government. During the draft RFP stage when contractors are asked for comments it is wise to highlight any omissions.

Cost Elements Most Subject to Negotiation

(7) Labor Category - The government may choose to question or have an alternative assessment of the skill level and mix necessary to perform the statement of work. A mutual agreement on the labor skill mix must be achieved.

(8) Labor Hours - The government may choose to question or have an alternative assessment of the quantity of labor hours necessary to perform the statement of work. A mutual agreement on the labor hours to do the job must be achieved.

(9) Number of Travel Trips - The government may choose to question or have an alternative assessment of the quantity of trips necessary to perform the statement of work. A mutual agreement on the number of trips must be achieved.

(10) Data Items - Some data item requirements are negotiable, such as the level of reporting in the product hierarchy for cost and schedule reporting. Agreement must be reached on these fields. Although data items are normally not quoted separately in the proposal, their preparation cost can be dramatically influenced by content requirements and heavily effect direct labor hours.

(11) Material and Labor Escalation - The government generally recognizes the consumer price index as a reasonable projection of annual labor and material cost increases. This index has been running plus or minus 3% per year for several years. In the event the contractor proposes escalation values in excess of 3.5% per year compounded for multi-year contracts, the rationale must be supported and agreed upon.

At the conclusion of the cost negotiation, all elements of cost for the base price of the contract have been agreed upon. During the course of the cost negotiations this agree-

ment can be reached by arriving at a fully negotiated amount for each of the above cost elements one by one, or offering and counter-offering at the total cost line until agreement is achieved. Very few contractors are willing to accept negotiated changes in cost elements IV. D. 1-5, above because the nature of these cost elements is fixed across the company for all projects or is firm in quotations by vendors, suppliers and government-mandated per diem rates.

E. Final Profit Negotiations - During the offer/counter-offer process the preliminary profit positions which may have been conveyed from one party to the other must be finalized. Under Federal Acquisition Regulations (FAR) a PCO must place in the negotiation file a memorandum on the derivation of the profit rate awarded to the contractor in the final price. The general rule of thumb from the government perspective is that once the costs for a contract have been agreed upon the profit rate is determined by the amount of risk to the contractor in the deal. In government contracting profit is rarely proposed at a higher rate than 25% and only at that level on firm, fixed price contracts where the risk to the contractor is the highest. In some time and material contracts, profit cannot be calculated on a cost base containing material, travel or subcontractor cost elements. Profit in these cases is only awarded on fully burdened labor through G&A. The following broad profit ranges apply in general to the various types of government contracts :

Contract Type

Firm, Fixed Price (FFP) - 15% to 20% profit on total cost

Time and Materials (T&M) - 5% to 15% profit on fully burdened labor cost

Cost Plus (CP) - 5% to 15% profit on fully burdened cost

The Federal Acquisition Regulation (FAR) prohibits profit awards above certain levels for certain types of contracts where the government is bearing virtually all the risk. The PCO has the authority to negotiate the profit rate with the contractor but his profit memorandum to the file must specify the logic he utilized. PCO's must therefor justify the profit by discussing risk and certain other factors in the memorandum. To assist PCO's the government has provided the "Weighted Guidelines Method" of profit determination for use by government representatives in developing a position on profit. Ask for a copy of the government's weighted guideline analysis. It lends structure to the profit negotiation process. As you will see when you analyze it the government assesses risk and certain other factors such as management/cost control, contract type, working capital and cost efficiency factors in determining the profit to award on the contract. Your job is to influence the government with regard to risk and other factors and obtain the highest possible profit considering the nature of the prospective contract and the risk involved in performing it. Remember that the PCO's opinion of the risk in the contract is being regularly influenced during all steps of the negotiation process.

Certain cost plus incentive fee and cost plus award fee arrangements are available to

the government and are usually specified in the RFP. Contractors are required to provide proposal input to these arrangements. A base fee is negotiated and then an incentive fee range or an award fee pool is also negotiated. The contract requires regular awards of additional increments of fee based on the performance achievements negotiated in advance with the contractor. A "Best Value" performance fee arrangement proposed by a contractor may be a key discriminator in winning a competitive procurement.

F. Contract Award -. Agreement on a final price for the contract is determined by the total negotiated cost plus the negotiated profit. The negotiation result is documented by the contractor in the form of a letter to the PCO specifying the date negotiations were concluded and the agreed upon price. A Certificate of Current Cost and Pricing may be required if the RFP contains the FAR clause for Certified Cost and Pricing Data. The clause has serious implications with regard to avoiding defective pricing and should be carefully researched before a company or an individual signs the document.

Upon receipt of negotiation confirmation from the contractor and the Certificate of Current Cost and Pricing, if required, the PCO and his staff prepare the contract document. The document is forwarded to the contractor for review, approval and signature. The PCO then signs the contract and returns a copy of the fully executed document to the contractor. You are now authorized to commence work. The government is obligated for the full amount of the contract and will pay invoices up to the incremental funding level. Many contracts are fully funded at award. Other contracts, particularly multi-year programs, are incrementally funded by year.

You are obligated for delivery of the supplies and services specified in the negotiated and signed contract in accordance with the delivery schedule and terms and conditions contained therein.

V. NEGOTIATIONS WITH A PRIME CONTRACTOR FOR A SUBCONTRACT

You signed a teaming agreement with a prime contractor during the RFP stage of a solicitation. You prepared your proposal and submitted it to the prime contractor who incorporated it into the submission to the government. Your submission contained flow-down versions of terms and conditions from the prime's federal contract as well as a technical description of the effort you intend to perform. Your cost proposal contained fully loaded rates for the labor categories and material as well as the travel you will perform on the subcontract. The government has awarded the prime contract to our team member. You are now undertaking negotiations with the prime to convert your teaming agreement to a subcontract. The subcontract will replace the teaming agreement between you and your prime.

Most prime contractors prefer to negotiate subcontracts with their team members before they negotiate the final prime contract with the government. Therefore, you will likely be approached by your prime with a certain element of urgency to finalize your subcontract and enable him to negotiate his deal. Keep in mind that your prime con-

tractor is preparing his cost for negotiations with the government and may be seeking to obtain cost benefits at your level which will offset elements of his proposal which he may have bid ambitiously.

A. Audit - Prime contractors do not have a right to your direct and indirect rate information. Subcontractors propose fully loaded labor and material through profit and do not disclose their rates to primes. Your teaming agreement may specify the profit rate your team member and you have agreed to apply. Other than profit, your prime does not know the make-up of your direct labor, overhead, material handling and G&A rates. Your proposal disclosed labor hours at a fully loaded rate and burdened material and travel cost. If your prime wants to audit any other cost element of your proposal he must request an assist audit through his PCO. If an assist audit is requested it will be identical to paragraph IV.A., above, except that the PCO will get a copy of the audit report but the prime contractor will get only a general statement regarding the adequacy of our rates and systems. Thus, the PCO on the procurement is in possession of more information than the prime contractor in terms of the cost elements in your proposal. This may seem a disadvantage, but it is the only way the federal government and its contractors have been able to protect proprietary information in an environment where a contractor is teaming with a company today and competing against the same company tomorrow in a different program.

B. Fact-Finding - Prime contractors have similar limitations to subcontractor proprietary data during fact-finding as they do during audit. However, as the government's buying agent for the subcontractor supplies and services, the prime is expected by the government to conduct a thorough source selection, to include market surveys, competition, technical qualification and contract negotiation. However, prime contractors cannot demand access to what subcontractors deem proprietary data without first signing a non-disclosure agreement with that subcontractor during the teaming agreement phase. Even then, most subcontractors will not disclose closely held process information, software source code and market sensitive data to a prime. When such data are disclosed they are clearly marked company proprietary. Therefore, for fact-finding the prime will utilize end items specifications for products, warranty details, personnel resumes for labor, financial performance information from Dunn and Bradstreet and customer satisfaction information from other clients. The prime may also request a tour of your facility if you are a first time supplier. The business relationship with a prime contractor is formed during the teaming agreement stage when the parties determine that they have complimentary capabilities. Keep in mind that the teaming agreement is replaced with a subcontract when the program is awarded by the government.

C. Pre-Award Survey - Same remarks as IV.C., above. The government PCO may request the Defense Contract Management Area Office (DCMAO) to complete the survey of a major subcontractor on a program where the subcontractor has a major portion of the effort and in cases where the subcontractor is new to the defense business. The PCO will always work through the prime contractor in arranging for the survey and the prime will receive a general statement when the survey is completed that the government either concurs or does not concur with your selection as a supplier. Once

again, the relationship formed with your prime contractor during the teaming agreement stage is key in determining your selection as a source.

D. Cost Negotiations - Same remarks as IV.D., above, except that you will be negotiating with a representative of the prime contractor, deemed a "Subcontract Administrator" or a "Subcontracts Manager" instead of the government. Only this person is authorized to commit the company and care should be taken not to undertake matters of negotiation with other members of the prime contractor organization without an authorized contracts representative present. The prime will not have access to your direct or indirect rates [(IV.D. (1) through IV. D. (3)], or the DCAA Audit Report or DCMA Fact-Finding Report. The other party will be viewing your labor, material and travel cost from a fully loaded standpoint and will likely focus on items IV. D. 7 through IV. D. 11, above in pursuing his negotiation target.

E. Final Profit Negotiations - The profit rate will be agreed upon with the prime as either a function of the teaming agreement or as a function of subcontract negotiations identical to IV. E. above except that you will be negotiating profit with your prime contractor instead of the government. Make use of weighted guidelines to support your proposed profit.

F. Contract Award - Identical to IV. F, above, except that you will receive your subcontract from the prime contractor and the prime's subcontract manager instead of the government and the PCO.

VI. NEGOTIATIONS WITH A SUBCONTRACTOR UNDER YOUR FEDERAL GOVERNMENT CONTRACT

You signed a teaming agreement with a subcontractor during the RFP stage of a solicitation. Your subcontractor prepared a proposal and submitted it to you. You incorporated it into the prime contract proposal to the government. You have negotiated flow-down versions of terms and conditions from your federal contract to the subcontractor as well as a technical description of the effort the subcontractor will perform. The subcontractor's cost proposal contained fully loaded rates for the labor categories and material as well as the travel he intends to perform on the subcontract. The government has awarded the prime contract to you. You are now undertaking negotiations with the subcontractor to convert your teaming agreement to a subcontract. The subcontract will replace the teaming agreement between you and your subcontractor.

It is preferable to negotiate subcontracts with team members before you negotiate your final contract with the government. Going into negotiations with the government having definitized your subcontracts reduces your risk in terms of unknowns contractually at the supplier level. It also eliminates the subcontractor wanting to know the result of your prime contract negotiations so that he can use it as a frame of reference for his negotiation position with you. The baseline when you go to the table with your subcontractor is your teaming agreement specifying his statement of work and your collective proposal to the government containing the prospective cost and price for his effort as

part of the total proposal.

A. **Audit** - You do not have a right to subcontractor direct and indirect rate information. Subcontractors propose fully loaded labor and material though profit and do not disclose their rates to primes. Your teaming agreement may specify the profit rate you and your team member have agreed to apply. Other than profit, you do not know the specific make-up of your subcontractors direct labor, overhead, material handling and G&A rates. The subcontractors proposal has disclosed the labor hours at a fully loaded rate and burdened material and travel cost. If you wish to audit any other cost element of his proposal you must request an assist audit from DCAA through your PCO. If an assist audit is conducted, it will be held at the subcontractor identical to paragraph IV. A., above, except that the PCO will get a copy of the audit report and you will get a general statement regarding the adequacy of the subcontractor's rates and systems. Thus, the PCO on the procurement is in possession of more information than you are in terms of the cost elements in our subcontractor's proposal. This may seem a disadvantage, but it is the only way the federal government and its contractors have been able to protect proprietary information in an environment where a firm is teaming with a company today and competing against the same company tomorrow in a different program.

B. **Fact-Finding** - You have similar limitations to access subcontractor proprietary data during fact-finding as you do during the audit. However, as the government's buying agent for the subcontractor's supplies and services, you are expected by the government to conduct a thorough source selection, to include market surveys, competition, technical qualification and contact negotiation. However, you cannot demand access to what subcontractors deem proprietary data without first signing a non-disclosure agreement with the subcontractor during the teaming agreement phase. Even then, most subcontractors will not disclose closely held process information, software source code and market sensitive data to a prime. When such data are disclosed they are clearly marked company proprietary. Therefore, for fact finding you will utilize end item specifications for products, warranty details, personnel resumes for labor, financial performance information from Dunn and Bradstreet and customer satisfaction information from other clients. You may also request a tour of the subcontractor's facility, especially if he is a first time supplier. The business relationship with a subcontractor is formed during the teaming agreement stage when the companies determine that they have complimentary capabilities. Keep in mind the teaming agreement is replaced with the subcontract you are negotiating.

C. **Pre-Award Survey** - Same remarks as IV. B., above. The pre-award survey will be completed by the government and results will be supplied to the PCO. You will get a general statement that the government either concurs or does not concur with your subcontractor selection.

D. **Cost Negotiations** - Same remarks as IV.D., above, except that you will be negotiating with a representative of the subcontractor, deemed a "Contract Administrator" or a "Contracts Manager" instead of the government. Only this person is authorized to

commit his company and care should be taken not to undertake matters of negotiation with other members of the subcontractor's organization without an authorized contracts representative present. You do not have access the subcontractor's direct or indirect rates [(IV.D. (1) through IV. D. (3)], or the DCAA Audit Report or DCMA Fact-Finding Report. You will be viewing your subcontractor's labor, material and travel cost from a fully loaded standpoint. Focus on items IV. D. 7 through IV. D. 11, above in pursuing your negotiation target. Remember you are acting in the role of the government in this negotiation.

E. Final Profit Negotiations - The profit rate will be agreed upon with the subcontractor as either a function of the teaming agreement or as a function of subcontract negotiations identical to IV. E., above except that you will be in the contracting role instead of the government. Make use of weighted guidelines to support your proposed profit.

F. Contract Award - Identical to IV. F., above, except that you will issue a subcontract to your partner.

36. WEIGHTED GUIDELINES PROFIT DETERMINATION IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACT NEGOTIATIONS

RECORD OF WEIGHTED GUIDELINES APPLICATION						REPORT CONTROL SYMBOL DD-AT&L(Q)1751		
1. REPORT NO.	2. BASIC PROCUREMENT INSTRUMENT IDENTIFICATION NO.				3. SPIIN		4. DATE OF ACTION	
	a. PURCHASING OFFICE	b. FY	c. TYPE PROC INST CODE	d. PRISM			a. YEAR	b. MONTH
5. CONTRACTING OFFICE CODE					ITEM	COST CATEGORY		OBJECTIVE
6. NAME OF CONTRACTOR					13. MATERIAL			
					14. SUBCONTRACTS			
7. DUNS NUMBER			8. FEDERAL SUPPLY CODE		15. DIRECT LABOR			
					16. INDIRECT EXPENSES			
9. DOD CLAIMANT PROGRAM			10. CONTRACT TYPE CODE		17. OTHER DIRECT CHARGES			
					18. SUBTOTAL COSTS (13 thru 17)			
11. TYPE EFFORT			12. USE CODE		19. GENERAL AND ADMINISTRATIVE			
					20. TOTAL COSTS (18 + 19)			
WEIGHTED GUIDELINES PROFIT FACTORS								
ITEM	CONTRACTOR RISK FACTORS		ASSIGNED WEIGHTING	ASSIGNED VALUE		BASE (Item 20)		PROFIT OBJECTIVE
21.	TECHNICAL		%					
22.	MANAGEMENT/COST CONTROL		%					
23.	PERFORMANCE RISK (COMPOSITE)							
24.	CONTRACT TYPE RISK							
25.	WORKING CAPITAL		COSTS FINANCED		LENGTH FACTOR		INTEREST RATE	
						%		
	CONTRACTOR FACILITIES CAPITAL EMPLOYED			ASSIGNED VALUE		AMOUNT EMPLOYED		
26.	LAND							
27.	BUILDINGS							
28.	EQUIPMENT							
29.	COST EFFICIENCY FACTOR		ASSIGNED VALUE		BASE (Item 20)			
						%		
30.	TOTAL PROFIT OBJECTIVE							
NEGOTIATED SUMMARY								
				PROPOSED		OBJECTIVE		NEGOTIATED
31.	TOTAL COSTS							
32.	FACILITIES CAPITAL COST OF MONEY (DD Form 1861)							
33.	PROFIT							
34.	TOTAL PRICE (Line 31 + 32 + 33)							
35.	MARKUP RATE (Line 32 + 33 divided by 31)			%		%		%
CONTRACTING OFFICER APPROVAL								
36. TYPED/PRINTED NAME OF CONTRACTING OFFICER (Last, First, Middle Initial)			37. SIGNATURE OF CONTRACTING OFFICER			38. TELEPHONE NO.		39. DATE SUBMITTED (YYYYMMDD)
OPTIONAL USE								
96.	97.		98.			99.		

DD FORM 1547, JUL 2002

PREVIOUS EDITION IS OBSOLETE.

DD FORM 1547 RECORD OF WEIGHTED GUIDELINES APPLICATION

INTRODUCTION

Previous posts at this site have discussed proposal preparation and negotiation:

<http://www.smalltofeds.com/2007/02/federal-government-contract-proposal.html>

<http://www.smalltofeds.com/2010/05/pricing-small-business-federal.html>

<http://www.smalltofeds.com/2007/03/small-business-federal-government.html>

We have noted in the above discussions that the accepted template for negotiated procurements with the government is as follows:

- A. Audit
- B. Fact-finding
- C. Pre-award Survey
- D. Cost Negotiations
- E. Final Profit Negotiations
- F. Contract Award

Although policy in FAR Part 215-404-4 states that contracting officers” do not perform a profit analysis when assessing cost realism in competitive acquisitions”, it is wise to understand that during Steps A through D above, the contracting officer and his representatives are indirectly forming opinions of the risk to the contractor and the mix of cost elements in the proposal. That opinion directly effects profit negotiations and judgments at Step E, above.

Although the above FAR clause allows for 3 methods of profit negotiation, this article will discuss the most common method contracting officers use -- the Weighted Guidelines Method.

ELEMENTS

Contractors should be aware that the Weighted Guidelines Method is mandatory for all negotiated procurements except Cost-Plus Award Fee Contracts and exceptions as approved by a higher authority. Contracting officers are to prepare their position using DD Form 1547 with associated backup and file it at the conclusion of negotiations.

Understanding the weighted guidelines method can assist in achieving a higher profit on a negotiation because a contractor can present a position at the table that logically supports the following elements required by FAR Part 215-404-4:

Performance risk

Contract type risk

Facilities capital employed

Cost efficiency

The detailed analysis guidelines for contracting officers under each of the above factors are contained at the following link:

http://www.acq.osd.mil/dpap/dars/dfars/html/current/215_4.htm#215.404-71

It should be noted that the Facilities Capital Cost Employed (FCCM) factor (a separate DD Form 1861) does not always enter into small business negotiations, because many start-ups and smaller enterprises do not propose it as part of their allowable costs due to elements they cannot demonstrate in capital investment, land, buildings and similar items.

UTILIZING THE FORM FOR NEGOTIATION

A DD Form 1547 accompanies this posting. An Excel version with arithmetic formulas and a separate tab for DD Form 1861, FCCM, can be downloaded from the second Box Net "References" cube in the left margin of this site.

Study the form and its guidelines at the above link. Apply it to your proposal. This puts your perspective on profit into the same structure as the contracting officer is required to develop his.

When profit discussions ensue and the contracting officer takes a position, ask for a copy of his weighted guidelines analysis form. If he does not provide it, or has not prepared one, give him yours with your position on profit, updated to reflect costs negotiated during steps A-D above.

A reasonable discussion can then occur on the elements of profit negotiation and offers, counter offers and ultimate agreement can be equitably reached with a known structure addressing risk and other required factors.

SUMMARY

The majority of negotiated cost proposal effort involves coming to an agreement with the government on cost realism via audit, fact-finding, pre-award survey and cost realism. But keep in mind that the government is forming an opinion on the elements of weighted guidelines profit determination during those stages as well.

You can influence the government negotiator (s) on the weighted guidelines profit elements during the early stages of negotiations as you settle on cost factors. You do so by presenting the data and narrative basis of estimate in such a fashion as to identify risk and other key area of weighted guidelines analysis. Insure the technical, management and cost volumes of your proposal, if they are required, are consistent in that regard.

Update your DD Form 1587 in your working file and prepare to use it as you settle on profit to conclude negotiations. Relate your profit position to weighted guidelines cost elements, as agreed upon with the government, supported by your proposal and any other documented disclosures you have submitted during negotiations. Doing so will support your position on profit and give the contracting officer an opportunity to accept it.

37. CONTRACT WORK AUTHORIZATION

WORK AUTHORIZATION IS KEY IN YOUR CONTRACT MANAGEMENT PROCESS

The execution of your contract (signing by both parties) is a key benchmark in government contracting. It triggers several events such as the start of the period of performance and the delivery schedule time period. Execution begins a billing period start date, and contractual obligations by the government and the contractor.

You should establish an internal document to your company that contains the pertinent data for the contract and assigns it a unique contract identifier in your business system. This is necessary for billing and cost collection purposes as well as government audits. Astute government contractors do not allow effort to proceed or cost to be incurred on a particular contract until such a document is generated, signed, approved and distributed by a company official assigned the duty of releasing the contract for performance. Such documents are commonly called "Work Authorizations", "Release Orders" "Production Release Orders" or a similar term to benchmark the new business and begin performance, accounting, and time and materials accumulation on the contract. Any cost or supplier commitments prior to a signed contract are considered pre-contract costs by the government under FAR and require special authorization by the PCO under the contract. They cannot be billed until the contract is signed. Incurring pre-contract costs without authorization is high risk for the contractor. Any work or supplier commitments outside the scope of the current contract documentation are also high risk without a negotiated contract amendment adding the scope of work to the contract or government authorization for the use of designated management reserve.

Sarbanes Oxley regulations and other recent government laws regarding corporate responsibility have made control of work authorization and record keeping an important factor in recent years. Keep in mind that a small business past performance record is generated when a contract is signed and this record is maintained by the government and is updated as deliveries and performance occur. You should begin your internal project management record on each contract by attaching all the necessary information for your performing organizations and support functions to begin doing their jobs. A copy of the contract should accompany the internal release to key functions in your enterprise. The master should be filed in your central files. Some companies perform work authorization electronically. The government is moving in the direction of electronic record keeping as well.

38. SMALL BUSINESS FEDERAL GOVERNMENT CONTRACT BILLING

Standard Form 1034 Revised October 1987 Department of the Army 1 TFM 4-2000		PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL				Voucher No. 593281	
U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION Department of the ARMY Nth Area Finance Support Center APO AE 00098			DATE VOUCHER PREPARED 10/17/XX		SCHEDULE NO.		
			CONTRACT NUMBER AND DATE DA-HC-21-72A2578 8/21/XX		PAID BY APO AE 00098 DSSN 9000 18 Oct 19XX		
			REQUISITION NUMBER AND DATE				
PAYEE'S NAME AND ADDRESS XYZ Electronics, Inc 18 Business Street Anywhere, U.S.A.			DATE INVOICE RECEIVED 10/1/XX				
			DISCOUNT TERMS				
			PAYEE'S ACCOUNT NO.				
SHIPPED FROM		TO		WEIGHT		GOVERNMENT B/L NO.	
NUMBER AND DATE OF ORDER	DATE OF DELIVERLY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary.)		QUAN TITY	UNIT PRICE		AMOUNT ¹
					COST	PER	
81329 8/27/XX	9/25/XX	Analog Digital Convrt.		10	30	ea	300
42573 8/27/XX	9/25/XX	Transistor		20	5	ea	100
(Use cont. sheet if necessary) (Payee must NOT use the space below)					TOTAL DM		400
PAYMENT <input type="checkbox"/> PROVISIONAL <input checked="" type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> PROGRESS <input type="checkbox"/> ADVANCE		APPROVED FOR DM 400 = \$200.00 BY ² J. R. Frost, LTC, FC TITLE Disbursing Officer		EXCHANGE RATE DM 2 = \$1.00		DIFFERENCES	
					Amount verified correct for		\$200.00
					(Signature or initials)		
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.							
(Date)		(Authorized Certifying Officer)			(Title)		
ACCOUNTING CLASSIFICATION							
21*XXXX XX-XXXX PXXX-XX SXX-XXX					200.00		
PAID BY	CHECK NUMBER		ON ACCOUNT OF U.S. TREASURY		CHECK NUMBER		ON (Name of bank)
	CASH \$		DATE		48679		American Express
						PAYEE ³	
1 When used in foreign currency, insert name of foreign currency. 2 If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided over his/her official title. 3 When a voucher is received in the name of a company or corporation, the name of the person writing the company, or corporate name, as well as the capacity in which he/she signs must appear. For example: John Smith, "Secretary or Treasurer", as the case may be.						PER	
						TITLE	
PRIVACY ACT STATEMENT							
The information requested on this form is required under the provision of 31 U.S.C. 52b and 52c for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.							

OMMPC010

38.FEDERAL GOVERNMENT CONTRACT BILLING

A recent poll revealed that in excess of 40% of the visitors who voted on the topics listed at this site wished to see a feature on government contract billing. Billing under federal government contracts can cause difficulty for small businesses because they often do not recognize that setting up complete contract identification information on the government billing form is vital to smooth invoice processing.

Another major feature not recognized by businesses new to government contracting is the relationship between inspection and acceptance records and invoice approval. The type of contract also drives invoice preparation and requirements for supporting information.

The below article is an extract from the Navy SBIR site and is one of the most informative discussions I have seen by a government agency on the topic of billing. Following that article below is a special notice from the Defense Finance Accounting Service regarding electronic billing and links to tools insuring that mode is achieved correctly.

HOW TO GET PAID ON TIME

<http://www.navysbir.com/paid.htm>

1. Instructions for Invoicing and Vouchering are usually included in Section G of the contract. The instructions will include the location where vouchers shall be sent. If the contract requires the contractor to send vouchers to the sponsoring DoD organization for approval, the DoD organization would forward vouchers, after approval, to the appropriate DFAS for payment. The appropriate DFAS will usually appear at block 12 on page one of the contract. It is important for contractors to follow specific instructions contained in Section G of the contract. If there are any questions, they should call the contracting officer. This procedure should reduce the time required to process payments.

2.. Additional information on submission of vouchers is available from the Defense Contract Audit Agency. Contractors may request a copy of a guide entitled "Information for Contractors" (DCAAP 7641-90), August 1996, from Headquarters, Defense Contract Audit Agency, Operating Administrative Office, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219; Telephone No. (703) 767-1066; Telfax No. (703) 767-1061. This is an excellent source of information for contractors and its use is strongly recommended. A contractor may determine its local DCAA office by calling (703) 767-3274.

3. The type of contract will usually impact how, when, and under what circumstances the contractor will receive payments. The contract should be reviewed for payment schedules and procedures prior to signature. The contractor should understand how and under what circumstance each payment will be made. The following information is provided to help contractors better understand the payment process:

If the contract is Fixed-Price, the clause at FAR 52.232-2 will be included in the contract. This clause provides that contractors should be paid promptly as portions of work are completed. In order to provide for payment for a portion of the work, that portion of the work and price must be separately stated in the contract. If this is not done, the contractor will not be able to receive payment for portions of the work. The only other method of receiving interim payments on a fixed-price contract would be through progress payments, which can be authorized by the clause at FAR 52.232-16. Progress payment procedures are more complicated than partial payments and the contractor must have an approved accounting system if the progress payments clause is included in the contract.

If the contract is Cost-Plus-Fixed-Fee, a Cost-Reimbursement type of contract, the clause at FAR 216-7 will be included in the contract. This clause allows for submission of vouchers approximately twice each month for actual costs incurred. The clause also allows a small business to voucher for recorded costs for items or services purchased directly for the contract, even though they have not yet paid for those items or services. If the contract is incrementally funded (not fully funded at time of award) the contract will require the contractor to notify the contracting officer when additional funds will be required to continue performance.

If a fixed-price contract is incrementally funded, the clause at DFARS 252.232-7007 Limitation of Government's Obligation will be included in the contract. This clause requires the contractor to notify the contracting officer in writing at least ninety days prior to the date when, in the contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract. The notification will state the estimated date when that point will be reached and an estimate of additional funding needed to continue performance. This clause also provides that if such additional funds are not to be allotted, the contracting officer will terminate any items for which additional funds have not been allotted. However, the contract may be modified, by mutual agreement of the parties, to change the funding schedule and, if necessary, the period of performance.

If a cost-reimbursement contract is incrementally funded, the clause at FAR 52.232-22 Limitation of Funds will be included in the contract. This clause requires the contractor to notify the contracting officer in writing when costs expected to be incurred within the next sixty (60) days (may be varied from 30 to 90 days) will exceed 75 percent (may be 75 to 85 percent) of the total amount allotted. This notice should state the estimated

amount of the additional funds required to continue performance. This clause also provides that if additional funds are not to be allotted by the end of the period specified in the schedule or another agreed-upon date, upon the contractor's written request, the contracting officer will terminate the contract.

4. The clause at FAR 32-232.25 Prompt Payment is included in most SBIR contracts. The following information applies to prompt payment procedures:
The clause at FAR 32-232.25, among other things, provides that the due date for making an invoice payment by the designated payment office shall be the 30th day after the designated billing office has received a proper invoice from the contractor and/or the 30th day after Government acceptance.

FAR 32.903(a) and (b) requires that the Government NOT make an invoice or contract financing payment earlier than 7 days prior to the due date specified in the contract. The Defense Federal Acquisition Supplement (DFARS) states, at subparagraph 232.905(2), that "designated payment offices are encouraged to pay small disadvantaged business (SDB) concerns as quickly as possible after invoices are received and before normal payment due dates established in the contract. The restrictions of FAR 32.903 prohibiting early payment do not apply to invoice payments made to SDBs. Contractors shall not, however, be entitled to interest penalties if invoice payments are not made before the normal payment due dates established in the contract."

5. There are a number of things that contractors may do to help decrease the period of time between the submission of an invoice and receipt of payment:

Submit invoices directly to the designated billing office. Call the point of contact at that office to insure that acceptance has been accomplished and that the invoice has been sent to the designated payment office.

Contact the designated payment office to obtain status of invoices. (FAR 32.904(a)(4) states that contractors shall be informed of points of contact within their cognizant payment offices to enable them to obtain status of invoices.) Verify the due date for the invoice with the payment office – what do they consider the due date to be? If the payment office indicates a due date that is more than 30 days after the designated billing office accepted the supplies or services, point out that FAR 32.905(a)(ii) states "In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance." (The "constructive" acceptance period is 7 days.) Therefore, the due date should be 30 days after Government acceptance - commonly at the billing office.

Offer discount for prompt payment. FAR 32.905(g) states: that "when a discount for prompt payment is to be taken, payment will be made as close as possible to, but not later than, the end of the discount period. Payment terms are specified in the clause at 52.232-8, Discounts for Prompt Payment." For example, a discount of "1/2% - 14 days" offered on a \$10,000 invoice should result in a payment of \$9,950 within 14 days after the date of the invoice. The discount for prompt payment procedure should help in at

least two ways. (1) the due date would be computed from the date of the invoice rather than the date of acceptance (Note: acceptance must occur prior to payment and the invoice should be mailed on the date it is submitted), and (2) the "discount for Prompt Payment" offer would overcome the requirement at FAR 32.903(b) that the Government shall not make invoice payments earlier than 7 days prior to the due date specified in the contract. The offer for a discount for prompt payment should appear prominently on the invoice (perhaps underlined). It may be helpful to discuss this with the designated paying office in order to get their recommended format. It is not the intent of DoD to encourage or discourage use of the discount for prompt payment procedure. The purpose of this paragraph is to provide sufficient information for the contractor to make that choice.

IMPORTANT NOTICE FOR COMPANIES BILLING THE DEFENSE FINANCE ACCOUNTING SERVICE (DFAS)

Important Notice: Effective 12/31/07, the interfaces between WINS/EDI and MOCAS for commercial invoices and public vouchers will be disconnected. For further assistance, please contact the WAWF helpdesk:

<https://wawf.eb.mil/>

You can obtain learning tools for WAWF at the following web sites:

DFAS EC End Users Tool Box - Go here to obtain user guides, interactive tutorials and reference links to assist you with WAWF.

<https://wawf.eb.mil/documentation/WhatsNew.pdf>

WAWF Web-Based Training Site - Go here to learn how to use WAWF via self paced, online training. This training is an excellent place to begin learning about WAWF.

<http://www.wawftraining.com/>

WAWF Training Practice Web Site - Go here to practice using the WAWF application.

<https://wawftraining.eb.mil/>

Wide Area Work Flow - Receipts and Acceptance (WAWF-RA) is a Paperless Contracting DoD-wide application designed to eliminate paper from the receipts and acceptance process of the DoD contracting lifecycle. The goal is to enable authorized Defense contractors and DoD personnel the ability to create invoices and receiving reports and access contract related documents.

In the traditional DoD business method, three documents are required to make a payment - the contract, the receiving report and the invoice. Each of these may arrive at

the payment office separately - if they are paper. They are processed individually as they arrive. Information is then manually keyed in to the payment system. Using WAWF-RA, electronic documents are shared, eliminating paper and redundant data entry. Data accuracy is increased and the risk of losing a document is greatly reduced.

The contract is available through a seamless interface with an application called Electronic Document Access (EDA). Contractors have electronic options for submitting invoices and receiving documents. They can submit documents on the Web, through FTP, or through EDI.

Authorized DoD personnel receive notification electronically of pending actions and have a virtual folder of documents accessible. Digital signatures are used to authenticate the users and to digitally sign documents. In some cases, user id and password can be used in lieu of a digital signature.

WAWF-RA supports DoD's efforts to reduce unmatched disbursements in the DoD receipt, acceptance, entitlement and payment process through data sharing and electronic processing. The benefits to DoD are global accessibility of documents, reduced need for re-keying, improved data accuracy, real-time processing, and secure transactions with audit capability. For vendors, benefits include the capability to electronically submit invoices, reduction of lost or misplaced documents, and online access to contract payment records.

For security purposes, with WAWF-RA, user identity is assured through the use of digital signatures and certificates or user id and password over an SSL connection. The online data transmissions are protected with encryption.

For additional information, please see the WAWF-RA website at

<https://wawf.eb.mil/>

39. YOUR SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING PAST PERFORMANCE RECORD

“Relevant information for future source selection purposes, regarding a contractor’s actions under previously awarded contracts. It includes, for example, the contractor’s record of conforming to contract requirements and to standards of good workmanship; the contractor’s record of forecasting and controlling costs; the contractor’s adherence to contract schedules, including the administrative aspects of performance; the contractor’s history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor’s business-like concern for the interest of the customer.”

SYSTEMS CPAR FORM										
FOR OFFICIAL USE ONLY (When Filled In)										
CONTRACTOR PERFORMANCE ASSESSMENT REPORT (CPAR) -					SYSTEMS					
(Source Selection Sensitive Information)(See FAR 3.104)										
1. NAME/ADDRESS OF CONTRACTOR (Division)				2.	INITIAL	INTER-MEDIATE	FINAL REPORT	ADDENDUM		
3. PERIOD OF PERFORMANCE BEING ASSESSED										
CAGE CODE	DUNS+4 NUMBER			4a. CONTRACT NUMBER			4b. DOD BUSINESS SECTOR & SUB-SECTOR			
FSC OR SERVICE CODE	SIC CODE			5. CONTRACTING OFFICE (ORGANIZATION AND CODE)						
6. LOCATION OF CONTRACT PERFORMANCE (If not in item 1)				7a. CONTRACTING OFFICER			7b. PHONE NUMBER			
				8. CONTRACT AWARD DATE			9. CONTRACT COMPLETION DATE			
				10. CONTRACT PERCENT COMPLETE/DELIVERY ORDER STATUS						
				11. AWARDED VALUE			12. CURRENT CONTRACT DOLLAR VALUE			
				13.			COMPETITIVE			NON-COMPETITIVE
14. CONTRACT TYPE										
	FFP	FPI	FPR	CPFF	CPIF	CPAF	MIXED	OTHER		
15. KEY SUBCONTRACTORS AND DESCRIPTION OF EFFORT PERFORMED										
16. PROGRAM TITLE AND PHASE OF ACQUISITION (If applicable)										
17. CONTRACT EFFORT DESCRIPTION (Highlight key components, technologies and requirements; key milestone events and major modifications to contract during this period.)										
18. EVALUATE THE FOLLOWING AREAS				PAST COLOR	RED	YELLOW	GREEN	GOLD	BLUE	N/A
a. TECHNICAL (QUALITY OF PRODUCT)										
(1) PRODUCT PERFORMANCE										
(2) SYSTEMS ENGINEERING										
(3) SOFTWARE ENGINEERING										
(4) LOGISTIC SUPPORT/SUSTAINMENT										
(5) PRODUCT ASSURANCE										
(6) OTHER TECHNICAL PERFORMANCE										
b. SCHEDULE										
c. COST CONTROL										
d. MANAGEMENT										
(1) MANAGEMENT RESPONSIVENESS										
(2) SUBCONTRACT MANAGEMENT										
(3) PROGRAM MANAGEMENT & OTHER MANAGEMENT										
e. OTHER AREAS										
(1)										
(2)										

FOR OFFICIAL USE ONLY (When Filled In)

INTRODUCTION

As a small enterprise enters the government contracting venue, the phrase “Past Performance” almost immediately comes to the fore. When examining government Requests for Proposal (RFP’s) a section of the award criteria is almost always specified for past performance ratings on previous similar government work.

We have discussed meeting the initial past performance challenge for companies new to government contracting in the following discussion:

<http://www.smalltofeds.com/2008/07/small-business-government-contracting.html>

The primary purpose of past performance evaluations is to ensure that accurate data on contractor performance is current and available for use in source selections. A past performance evaluation report provides a record of a contractor’s performance, both positive and negative, on a given contract during a specified period of time.

This article will focus on accessing your past performance record, and explain how the government rates a contractor’s past performance:

ACCESS

The following is an extract from the Contractor Past Performance Information Retrieval Web Site on obtaining information on your company information there:

<http://www.ppirs.gov/ppirsfiles/faqs.htm>

“Contractors obtain access to PPIRS through the Central Contractor Registration process. To obtain access, a contractor must enter a Marketing Partner Identification Number (MPIN) in their profile in the Central Contractor Registration system

(<http://www.ccr.gov/>).

This can then be used to access their own reports in PPIRS. If they are already registered in CCR, contractors will be asked for their DUNS number and Transaction Partner Identification Number (TPIN) when they update their contractor profile to include the past performance point of contact and MPIN. Contractors should ensure that they know their DUNS number and TPIN number in order to update contact information in their CCR profile. To access information in PPIRS, they log in using their DUNS and MPIN number.

Performance Assessment reports are NOT required on every contract. The government has issued agency guidelines that define when a report card should be completed. Generally report cards are required for all contracts for products or services that are greater than \$100,000. However, DOD has been granted a waiver to that requirement (See class deviation 99-O002 of 29 January 1999). Instead, within DOD, they categorize procurements by business sector and dollar value groupings. These are listed in the DOD Guide to Collection and Use of Past Performance Information. A copy of that guide is available at http://www.acq.osd.mil/dpap/Docs/PPI_Guide_2003

If you are providing commodities or services in the Systems or Operations Support business sector then a report would be required if the total dollar value of any one contract exceeds \$5,000,000. For Services and Information Technology, the threshold is any contract that totals over \$1,000,000. For Ship Repair and Overhaul contracts the reporting threshold is \$500,000. For Fuels and Healthcare, it is only \$100,000. Within DOD, there are also specialized past performance databases for the Construction (CCASS) and Architect-Engineering (ACASS) business sectors. If you are doing business in those specialized business sectors, your past performance information would be in either ACASS or CCASS. For more information ACASS/CCASS, go to <https://www.nwp.usace.army.mil/ct/i>. Another guide that is applicable to all agencies is the OFPP Best Practices for Collecting and Using Current and Past Performance Information.

We've been collecting report card information for about the past five years. Not all assessing officials have yet gotten into the habit of completing report cards. If one is not completed, it will not be in the PPIRS system. If you know that you have a contract that falls within the reporting limits indicated above, then you should contact that contract's program manager or contracting officer to assure that a report card is completed. By doing that, you will ensure that a record of your performance will be available to source selection officials for consideration in future contract awards.

CCR information is contained in a different database than PPIRS. Currently, the CCR file is updated to PPIRS weekly (usually on Thursday mornings). call our Help Desk at (207) 438-1690 and we will research and help correct a problem.

A report card is not required until at least twelve months have passed since the contract was awarded. So, a report card may not yet be due. Second, the government is allowed an additional period of time for report processing. Even if a contractor has commented on a report card, it still must be processed by the program manager/ assessing official and possibly a reviewing official before the completed report is entered into the PPIRS database and made available to source selection officials.

Tip: As a contractor, you do not have to enter any parameters on the “Assessment Reports” selection screen to view all of the information assigned to your DUNS and MPIN number. Just click on “Submit” to view all the PPIRS information for your company. The application has already restricted you to view only PPIRS information assigned to your DUNS and MPIN combination. The filters that are available on the “Assessment Reports” retrieval menu simply allow you to further restrict your view to a defined subset of the information that is available to you.

PPIRS contains all of the records that have been submitted by the contracting official responsible for preparing the report. NIH, NASA and DOD operate systems to track contractor performance. These systems feed into PPIRS. DOD also has specialized databases that track performance on construction (CCASS) and Architect-Engineering (ACASS) contracts. ACASS data is not yet in PPIRS, but plans are underway to make that information available in PPIRS. Use of PPIRS is not mandatory, therefore an agency may track performance using a manual process.”

PAST PERFORMANCE REVIEW CONTENTS BY KEY ASSESSMENT ELEMENT

Below are the key assessment elements required for contractor reviews of major procurement sectors in federal government contracting.

Assessment Elements for the Systems Sector

Technical (Quality of Product) —This element is comprised of an overall rating and six sub elements.

Activity critical to successfully complying with contract requirements must be assessed within one or more of these sub-elements. The overall rating at the element level is the Program Manager's integrated assessment as to what most accurately depicts the contractor's technical performance or progress toward meeting requirements. It is not a predetermined roll-up of the sub-element assessments.

Product Performance—Assess the achieved product performance relative to performance parameters required by the contract.

Systems Engineering—Assess the contractor's effort to transform operational needs and requirements into an integrated system design solution.

Software Engineering—Assess the contractor's success in meeting contract requirements for software development, modification, or maintenance. Results from Software Capability Evaluations (SCEs) (using the Software Engineering Institute {SEI's} Capability Maturity Model {CMM} as a means of measurement), Software Development Capability Evaluations (SDCEs), or similar software assessments may be used as a source of information to support this evaluation.

Logistic Support/Sustainment—Assess the success of the contractor's performance in accomplishing logistics planning.

Product Assurance—Assess how successfully the contractor meets program quality objectives (e.g., producibility, reliability, maintainability, inspectability, testability, system safety) and controls the overall manufacturing process.

Other Technical Performance—Assess all the other technical activity critical to successful contract performance. Identify any additional assessment aspects that are unique to the contract or that cannot be captured in another sub-element.

SCHEDULE—Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, administrative requirements, etc.

COST CONTROL—(Not required for firm-fixed-price or firm-fixed-price with economic price adjustment contracts.) Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost, including reporting and analyzing variances.

Management—This element is comprised of an overall rating and three sub-elements. Activity critical to successfully executing the contract must be assessed within one or more of these sub-elements. This overall rating at the element level is the Program Manager's integrated assessment as to what most accurately depicts the contractor's performance in managing the contracted effort. It is not a predetermined roll-up of the sub-element assessments.

Management Responsiveness—Assess the timeliness, completeness, and quality of problem identification, corrective action plans, proposal submittals (especially responses to change orders, engineering change proposals, or other undefinitized contract actions), the contractor's history of reasonable and cooperative behavior, effective business relations, and customer satisfaction.

Subcontract Management—Assess the contractor's success with timely award and management of subcontracts, including whether the contractor met or exceeded small business, small disadvantaged business, small business HUBZone, veteran-owned small business, service disabled veteran-owned small business, and women-owned small business participation and subcontracting goals.

Program Management and Other Management—Assess the extent to which the contractor discharges its responsibility for integration and coordination of all activity needed to execute the contract, identifies and applies resources required to meet schedule requirements, assigns responsibility for tasks/actions required by contract, and communicates appropriate information to affected program elements in a timely manner. Assess the contractor's risk management practices, especially the ability to identify risks and formulate and implement risk mitigation plans. If applicable, identify

and assess any other areas that are unique to the contract or that cannot be captured elsewhere under the Management element.

Assessment Elements for the Services, Information Technology, and Operations Support Sectors

QUALITY OF PRODUCT OR SERVICE—Assess the contractor's conformance to contract requirements, specifications, quality of software product and development, and standards of good workmanship (e.g., commonly accepted technical, professional, environmental, or safety and health standards).

SCHEDULE—Assess the contractor's timeliness against the completion of the contract, task orders, milestones, delivery schedules, and administrative requirements (e.g., efforts that contribute to or effect the schedule variance).

COST CONTROL—(Not required for firm-fixed-price or firm-fixed-price with economic price adjustment contracts.) Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost, including reporting and analyzing variances.

BUSINESS RELATIONS—Assess the integration and coordination of all activity needed to execute the contract, specifically the timeliness, completeness, and quality of problem identification, corrective action plans, proposal submittals, the contractor's history of reasonable and cooperative behavior, customer satisfaction, timely award and management of subcontracts, and whether the contractor met small business, small disadvantaged business, small business HUBZone, veteran-owned small business, service disabled veteran-owned small business, and women-owned small business participation and subcontracting goals.

MANAGEMENT OF KEY PERSONNEL (for Services and Information Technology business sectors only)—Assess the contractor's performance in selecting, retaining, supporting, and replacing—when necessary—key personnel.

SUMMARY

Regular review of your past performance information system data is vital to your future marketing efforts. Please feel free to download the Guide to the Past Performance Retrieval System in the second, vertical Box Net "References" cube in the left margin of this site.

40. SMALL BUSINESS GOVERNMENT CONTRACT PROPERTY MANAGEMENT

For small businesses involved in development and manufacturing efforts under government contracts, or those who are pursuing research and development involving large scale systems, the government property topic often arises.

In general, government contractors are required to provide all that is necessary to fulfill the scope of work on a government contract. However, under time and materials and cost plus contracts where the acquiring agency has made substantial investment in manufacturing aids, special test equipment or apparatus, title to such items will fall to the government.

Title falls to the contractor on firm, fixed price contracts where the cost is base lined at contract award and is assumed to include all that is required to produce the end item when it was bid.

Government property must be stored separately from contractor property when not in use, identified in the facility inventory system as government owned and have government property tags.

Rent – Free Use of government property accountable under one contract must be requested on a non-interference basis from the owning contracting officer before use on another contract and the using contract must reference the approval.

The government may elect to charge rent for use of government property under commercial or foreign contracts. The process for calculating and paying rent is specified in FAR 52.245-9.

The principal FAR Clauses for government Property are 52.245-1 and 52.245-2. If you are undertaking a contract involving government property please read these FAR Clauses. Within these clauses are requirements for inventory, disposal and disposition of government property.

<http://farsite.hill.af.mil/VFFARA.HTM>

Government property may be furnished by the acquiring agency with a contract award and may be placed in the care of the contractor. In those cases accountability for the items, together with associated maintenance may be assigned to the contract and re-assignment of the property must occur before the contract can be closed out at completion.

41. SECURITY CLEARANCES IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

While exploring the federal government marketplace the small business will encounter programs and potential contracts that involve security clearances. This is common in the Departments of Defense, Energy, Homeland Security and many other agencies. "FedTeDs" (Federal Technical Data Solutions) is a password-protected, web-based tool designed to safeguard the distribution of sensitive, unclassified, acquisition-related information for all federal agencies. FedTeDS allows Contracting Officers (COs) to use the internet to disseminate sensitive information in a secure way and eliminate the need to create and distribute CDs or paper documents. On some programs access to bid documentation may require a company and/or individual registration to acquire access.

Small business must grow into federal government classified programs. Individual and company clearance designations exist at various levels, depending on the relative risk to national security if unauthorized disclosure occurs. Clearances for key management are necessary to achieve a company clearance and all clearances are expensive. Either your company or a sponsor in the form of a prime contractor or government agency must pay for the process; the higher the security clearance the more costly the clearance. For facility clearances involving housing classified material, a building itself may require modifications for classified storage, communication devices or meeting accommodations (Sensitive Compartmented Information Facility or SCIF).

Becoming involved in the classified contract venue requires that you budget the time, the expense and the processes necessary and that you expense them in your forecasted overhead rate budgets so the costs can be appropriately priced and recovered via government contract billing. You must also carefully research government regulations such as the "National Industrial Security Program Operating Manual" (NISPOM) which governs the classified environment across all federal agencies:

<http://www.fas.org/sqp/library/nispom.htm>

The US Government security clearance process is based on two major principles:

1. A "Need to Know"
2. A requirement to perform a job on a specific government contract containing classified work.

Initial clearances are obtained by developing a business relationship with an agency or a prime contractor performing classified work and then getting assigned to a contract effort which is classified. Thereafter, clearances at certain lower levels can be carried by your employees or your company to other contracts at the same level of clearance requirement or even to a different agency within certain time constraints. At higher levels of clearances every employee is "Read On" and "Read Off" each and every contract on a singular basis after extensive background checks and in certain instances a polygraph. The process can involve lifetime nondisclosure commitments by an individual.

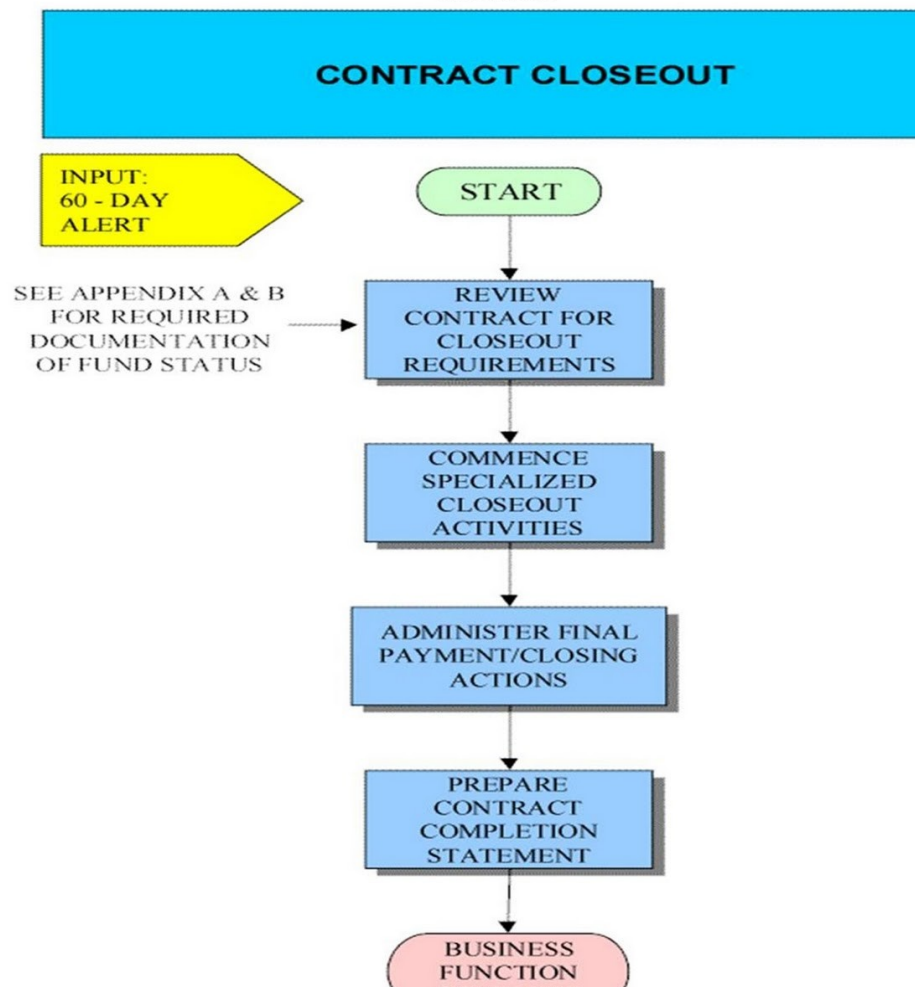
So you need a sponsor, a prime contractor company or an agency that will process your clearance based on your need to know classified information to participate in classified government contracts. Naturally they must be convinced via your marketing campaign that you can add value to the program involved. If it seems like a "Chicken and Egg" process - it is; but every business working in the venue has to go through the gates discussed in this article and maintain a vigilant program of compliance with associated regulations.

42. CONTRACT CLOSEOUT IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

Contract Closeout Guidebook

Defense Contract Management Agency
6350 Walker Lane, Suite 200
Alexandria, VA 22310

June 2009



INTRODUCTION

If you are an off-the-shelf or purchased-finished supplier of goods to the federal gov-

ernment, your contract closeout is reasonably simple. You will make delivery at a firm, fixed price to the agency to which you have contracted and submit an invoice. The government will receive and inspect the delivery and approve your invoice for payment. Assuming there are no ongoing warranties, logistics support or similar contract line items involved, the government will then closeout the contract, as will you. Contracts involving progress billing with retention, cost type contracts and those with intellectual property, government property, classified documents, provisional billing rates and similar more complex matters require astute attention to detail and considerably more administrative support and coordination between the contractor and the government for closeout. Successful contract closeout of these types of programs is an ongoing process beginning at contract award.

This article will discuss the principal features of the closeout process in small business federal government contracting and provide references for further process detail.

THE GOVERNMENT PERSPECTIVE

Below is a synopsis from the introduction to the Defense Contract Management Agency (DCMA) "Contract Closeout Guidebook" which is a free download from the second vertical "References" Box Net cube at this site. The synopsis and the book should be read carefully by small business federal government contractors:

"The contract closeout process starts at contract receipt and review and proceeds throughout the life of the contract. MOCAS input data must accurately represent the contract in order to ensure proper management, payment, and closeout. When all contract requirements have been met and the contract is physically complete, it should be moved to MOCAS Section 2. The easiest contracts to close are short term Firm Fixed Price contracts with one Accounting Classification Reference Number (ACRN) for each Contract Line Item Number (CLIN) and no special provisions. Cost-Type contracts with multiple ACRNs for each CLIN and special payment provisions are the most difficult to close.

Many closeout problems increase in difficulty over time. The inability to locate transaction support documents and to read faded print in hard copies of documents are two recurring problems.

Furthermore, if funds cancel before closure, appropriation law limits the types of adjustments that can be used to correct lines of accounting payment errors. Also, it can be difficult identifying and locating the responsible contracting officer because of reorganizations and closures directed by the Base Realignment and Closures Commission. In addition, over the past 20 years thousands of companies have gone out of business or been purchased by larger companies. Novation agreements may or may not have been signed by the gaining company. These activities have contributed to the difficulty in closing old contracts."

TIPS TO INSURE SUCCESSFUL CONTRACT CLOSOUT

Consider the type of contract under which you are operating and locate that type in the DCMA "Contract Closeout Guidebook". Insure the processes specified in the guide are followed in your contract administration from the onset of your contract. Government contract types are discussed at the following link:

<http://www.smalltofeds.com/2008/04/federal-government-contract-types.html>

Note the guide discusses both the role of the government and the contractor in close-out and the stages in achieving closeout in MOCAS - The government "Mechanization of Contract Administration Services" System.

Support Cost-Type Contracts With Timely Incurred Cost Proposal Rates and Submissions – Several articles at this site have addressed the development of forward pricing rates and associated DCAA audits and submissions. Here are the most important articles with respect to contract closeout::

<http://www.smalltofeds.com/2008/03/establishing-far-and-cas-compliant.html>

<http://www.smalltofeds.com/2008/02/dcaa-audits-and-small-business-job-cost.html>

<http://www.smalltofeds.com/2008/08/provisional-indirect-rates-in-small.html>

To close out a cost type contract that has been billed throughout its life at provisional rates, regular incurred cost submissions must be submitted by the contractor and verified by DCAA. Provisional rates must then be adjusted to audited applied actual costs and the final billing determined. This could result in net excess funding on the program that must be returned or a requirement for addition funding at closeout. In either case, the business impact could be substantial for a small enterprise.

Note the Simplifying Techniques Specified by the Government in the DCMA Guidebook:

“What Contractors Should Do To Simplify Closeout

Verify payment accuracy and report discrepancies immediately.

Provide Contracting Officer with cost estimates for 75% and 100% of projected cost (usually 60 days in advance) in compliance with Limitation of Cost/Funds Clauses (FAR 52.232.20 through 21) for cost reimbursement and facilities contracts.

Submit patent reports on time to the Administrative Contracting Officer when required by the patent clause.

Submit Overhead Rate Proposals no later than 6 months after the end of the contractor's fiscal year.

Prepare final voucher no later than 4 months after settlement of overhead rates.

Consider Quick Closeout procedure when it's determined that normal closeout will be delayed.

Execute government property disposition instructions expeditiously.”

SUMMARY

Becoming informed on government contract closeout steps and putting in place processes to support them in your business system is the most important general principal to remember. Consider the type of contract you are releasing for incurred cost. Bear in mind how an individual contract impacts on your business system and insure your business system supports the type of contract you are putting into play. Develop a good working relationship with your contracting officers, DCMA and DCAA. For more on the roles of these government functions, please see the following link:

<http://www.smalltofeds.com/2007/06/federal-government-contracting-customer.html>

43. SMALL BUSINESS FEDERAL GOVERNMENT CONTRACT DISPUTES AND APPEALS

REQUESTS FOR EQUITABLE ADJUSTMENT (REA) ALTERNATIVE DISPUTE RESOLUTION (ADR) AND CLAIMS

I. INTRODUCTION

The Federal Acquisition Regulation (FAR) contains provisions for contractors and the government to resolve contract disputes. Such matters arise due to events during performance, many times surfacing weaknesses in the original contract work definition, technical parameters, schedule factors or related terms and conditions that can lead to change implications effecting cost, schedule and delivery.

In short, when the understanding the parties thought they had at negotiation and execution of the contract is in dispute, there must be a resolution.

Such conditions open the baseline of the contract to further clarification and negotiation. The FAR recognizes that a fair and equitable process is necessary to settle such matters and re-establish a mutually agreeable contract baseline.

II. GENERAL CONSIDERATIONS

As we have conveyed earlier in discussions on contract terminations, certain conditions are usually present when a disputed contract is on the horizon.

Contract baseline management has been discussed previously in the following article:

<http://www.smalltofeds.com/2009/08/contract-baseline-management-in-small.html>

The above article offers six (6) rules of thumb:

1. KNOW - The contract value and its ceiling amount
2. KNOW - The incurred cost to date and commitments
3. KNOW - The scope of work and whether or not your current efforts are supporting it or some other objectives
4. KNOW - The estimated cost at completion based on where you are at today
5. KNOW - Your customer and who among the customer population is prone to direct out of scope effort.
6. KNOW - WHEN TO SAY "NO" to "Scope Creep" and say it officially in writing to the contracting officer specified in your contract.

The remainder of this article will discuss the three most common processes that contract disputes undergo and selecting the best method considering the circumstances that exist on the contract.

III. REQUESTS FOR EQUITABLE ADJUSTMENT (REA)

An REA is most often the first and the least formal step undertaken by a contractor when there has been a clear and recognizable departure from the contract baseline in terms of events that warrant cost, schedule, technical performance or terms and conditions parameter modification. It does not start the formal claims process under FAR with associated interest implications.

Submitted in the form of a proposal for contract change, the REA cites the "Before and After" conditions of the contract baseline and the details regarding the delta. Implicit in the submission are actual cost records, documents regarding government actions and guidance, an estimate of the new baseline impact in terms of cost, schedule or technical modifications to the agreement and a request for contract change.

The government agency may approve or deny the proposal, further negotiate the details with the contractor and may or may not modify the contract. The following article is an excellent guide to use and preparation of REA's:

http://www.cbh.com/news/newsletter_details.asp?id=144

IV. ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR takes advance planning on the part of the government agency and the contractor. Not every government contracting office chooses to place an ADR clause in contracts they execute. Not every contractor is willing to accept one at contract award. ADR is intended to be an alternative to the REA and formal claims process, whereby the government and the contractor agree in advance to place an ADR clause in the contract and subject any dispute that arises to the ADR process for resolution. Below is a quote from the FAR on the use of ADR:

"33.214 Alternative dispute resolution (ADR)

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

- (1) Existence of an issue in controversy;
- (2) A voluntary election by both parties to participate in the ADR process;
- (3) An agreement on alternative procedures and terms to be used in lieu of formal litigation; and
- (4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy.

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the

agency in writing of the contractor's specific reasons for rejecting the request.

(c) ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When ADR procedures are used subsequent to the issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision and does not constitute a reconsideration of the final decision.

(d) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

(e) The confidentiality of ADR proceedings shall be protected consistent with 5 U.S.C. 574.

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration."

V. CONTRACT CLAIMS

A formal contract claim is a significant step in the relationship with your customer. It acknowledges that the REA and ADR (if applicable to the contract) processes have not been effective in resolving the dispute and refers the matter to a formal claim which has the potential for adjudication. It also starts the interest clock in terms of government payment liability in the event the agency loses the claim during adjudication. Below are the major clauses regarding formal contract claims and the certifications by the contractor that apply. They have significant legal implications.

https://www.acquisition.gov/far/html/Subpart%2033_2.html

VI. SUMMARY

When contract disputes or the potential for claims and appeals arise it is best to view each instance uniquely in deciding which of the three avenues discussed in this article may be appropriate.

Contract disputes are serious matters. In the event the impact to the company from a risk perspective is substantial, it is best to involve a law firm that specializes in government contract claims for advice on how to proceed.

44. FEDERAL GOVERNMENT CONTRACT TERMINATIONS

I. INTRODUCTION

On occasion the government finds it necessary to terminate contractual arrangements with contractors. FAR Sub-part 49.5 governs such actions. This article will discuss the two most common forms of contract termination, what you should know about them and how to manage them.

II. GENERAL CONSIDERATIONS

Certain conditions are usually present when contract termination is on the horizon. These factors range from product and services obsolescence to developments that change the direction and amount of agency funding. They may also include customer relations difficulties or changes in the mission of an agency.

It is best to manage the risks associated with terminations by viewing them in the light of funding and performance liability. We have previously discussed limitation of funds and funding exposure in the following articles:

<http://www.smalltofeds.com/2007/09/limitatoin-of-funds-and-funding.html>

<http://www.smalltofeds.com/2009/08/contract-baseline-management-in-small.html>

If it is generally known, for instance, that if the government is having funding challenges in terms of justifying the next phase of a program, your company should carefully monitor incurred costs and commitments so they do not exceed the existing funding on the contract.

Moreover, if performance on a particular contract has been sub-par, deliveries have been late and corrective action has not remedied the situation, the reality of a termination for default should be assessed from a liability perspective; particularly concerning costs the government may bill the contractor for inconvenience. Receipt of "Show Cause" notices or "Cure Letters" are signs the government is positioning a justification for contract termination.

Terminations for default are particularly harmful to a contractor's past performance rating on federal government contracts:

<http://www.smalltofeds.com/2011/04/your-small-business-federal-government.html>

The remainder of this article will focus on each of the two major types of terminations and how to manage each.

III. TERMINATION FOR CONVENIENCE

This form of termination arises from standard clause(s) in your government contract that give the government the right to unilaterally terminate the contract at any time with or without giving any reason. The contractor is generally entitled to a negotiated settlement for an equitable recovery of costs and losses incurred. Please see the following link for applicable clauses:

https://www.acquisition.gov/far/current/html/Subpart%2049_5.html

A termination for convenience is the least risky form of termination to the contractor. Although receiving a notice that your contract is being terminated for convenience is never good news, it does offer the opportunity to recover costs you have incurred and those you estimate will impact your business due to the termination.

Actions necessary:

1. First, insure your costs to date, plus commitments have not exceeded the funding level of the contract. If they have, consider asking for a funds amendment to your contract to cover the overrun. It may not be granted by the government. Next, immediately notify departments internal to the company with regard to the termination and inform them that their charge numbers for the program have been closed. Close all charge numbers.
2. Notify all suppliers and subcontractors with respect to the contract termination, direct that they cease work, discontinue deliveries and submit to you a termination proposal containing itemization and costs associated with terminating their order or contract. You will negotiate with your supply chain and include their costs in your termination settlement proposal to the government.
3. Open a contract termination charge number for selected use by those who are associated with the termination to charge related time and expenses for ceasing work, inventorying material, supporting a termination proposal, dealing with suppliers, handling special requests or other direct efforts to cease work. It makes no difference whether the individuals are direct or indirect in their normal time keeping. This special accounting charge number will be utilized to record the cost to your firm for terminating the contract and proposing a settlement to the government.
4. Complete your contract termination settlement proposal and submit it to the agency contracting officer to meet the date specified by the agency for same. The following article originally appearing in the Air Force Law Review is an excellent reference for your termination settlement proposal preparation:

http://findarticles.com/p/articles/mi_m6007/is_2002_Spring/ai_103223911/

5. When the contract termination settlement proposal has been negotiated and formalized with an amendment to the contract, closeout the contract in accordance with the following government approved practices:

<http://www.smalltofeds.com/2010/12/contract-closeout-in-small-business.html>

IV. TERMINATION FOR DEFAULT

A termination for default rises from standard clause(s) in your contract that give the government the right to unilaterally terminate the contractor if the contractor fails to perform according to the specified terms. The contractor is generally not entitled to any payment for the unfinished part of the contract and, instead, may be liable for (1) repayment of monies advanced, (2) liquidated and other damages and (3) excess cost incurred by the government in completing the contact under a new contractor. Please see the following link for applicable clauses:

https://www.acquisition.gov/far/current/html/Subpart%2049_5.html

The Government contracting officer will terminate a contract for default when he or she determines that the contractor has failed to adequately perform in accordance with the contract. The Default clause applicable to fixed-price contracts limits the Government's liability for unaccepted work, subjects the contractor to actual (or liquidated) damages, and may subject the contractor for the excess cost of re-procurement. Moreover, the default becomes part of the contractor's past performance record which will harm the contractor's ability to compete on future contracts. Because the Government is not liable for work not accepted, the termination for default has a greater adverse consequence on supply contracts than service and construction contracts.

The government may terminate all or part of a contract for anything that was done that was not in the interest of the government, including:

Attempted fraud

Failure to meet quality requirements

Failure to deliver the supplies or perform the services within the time specified in the contract

Failure to make progress and that failure endangers performance of the contract
Failure to perform any other provisions of the contract.

Cure Notice

Before terminating a contract for default because of your failure to make progress or to perform, the contracting officer will usually give you a written notice, called a "cure notice." That notice allows you at least 10 days to cure any defects. Unless the failure to perform is cured within the 10 days, the contracting officer may issue a notice of termination for default.

Show-Cause Notice

If there is not sufficient time for a cure, the contracting officer will usually send a show-cause notice. That notice directs you to show why your contract should not be terminated for default. It ensures that you understand your predicament, and your answer can be used in evaluating whether circumstances justify default action.

If a contractor succeeds in appealing the termination for default, the default is usually converted into one for the convenience of the Government.

Actions Necessary:

1. When a termination for default is at hand, contact a law firm that specializes in government contract terminations and proceed within the guidance offered by them in pursuing any part of the termination that could be converted to a termination for convenience or other form of relief with respect to conditions over which you may not have had control or for which you may be entitled to a request for equitable adjustment or contract claim.
2. You should also proceed in accordance with paragraphs III. 1. through III. 3. above to limit your internal and supplier liability as well as isolate costs associated with the termination for a potential settlement or claim.
- 3.

When the contract has been amended by termination for default, close out the contract in accordance with the following government approved practices:

<http://www.smalltofeds.com/2010/12/contract-closeout-in-small-business.html>

V. SUMMARY

Contract terminations should be avoided if at all possible. They are expensive on the part of both the government and the contractor. The negative aspects of a termination for default, in particular, can last for years in government contractor past performance data bases.

45. WHAT IS A "COMPLIANT" GOVERNMENT CONTRACTING SMALL BUSINESS SYSTEM?

INTRODUCTION

Many inquiries have been received regarding compliance in small business government contracting business systems. It seems the single word, "Compliance", implies many different things:

Small Business wishes to know about compliance to assess the cost of doing business with the government, assure readiness and business system capability.

Software Suppliers maintain they have compliant tools to achieve government contracting business management and wish to sell them.

The Defense Contract Audit Agency (DCAA) has the mission to insure compliance with Cost Accounting Standards (CAS) under the Federal Acquisition Regulation.

Defense Contract Management Area Office Fact Finding Teams wish to observe small business systems to determine if an enterprise is capable of pricing, job cost accounting and billing consistency.

Prime Contractors wish to know if a subcontractor is compliant with FAR and CAS so related flow down clauses can be made part of contractual agreements.

COMPLIANCE CRITERIA

The criteria for determining government contracting small business system "Compliance", as discussed above, is met when:

1. The business system is unique to the company, and recognizes the way the firm is organized and the way it manufactures or delivers products, supplies or services. Each company does business in a slightly different way, performs services or delivers products with organizations that function in various manners and yet all ultimately meet Modified US Government Cost Accounting Standards (CAS) objectives by live data demonstrating consistency with regard to cost allocation to contract objectives in pricing, job cost accounting, billing and closeout.

2. The business system meets Modified Cost Accounting Standard (CAS) Coverage defined by the government is as follows:

Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs

http://edocket.access.gpo.gov/cfr_2005/octqtr/pdf/48cfr9904.401.pdf

Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose

http://edocket.access.gpo.gov/cfr_2004/octqtr/pdf/48cfr9904.402-50.pdf

Standard 9904.405, Accounting for Unallowable Costs

http://edocket.access.gpo.gov/cfr_2007/octqtr/pdf/48cfr9904.405-40.pdf

<http://www.smalltofeds.com/2007/04/unallowable-costs-under-federal.html>

Standard 9904.406, Cost Accounting Standard—Cost Accounting Period

http://edocket.access.gpo.gov/cfr_2001/octqtr/pdf/48cfr9904.406.pdf

Modified, rather, than full, CAS coverage may be applied to a covered contract of less than \$50 million awarded to a business unit that received less than \$50 million in net CAS-covered awards in the immediately preceding cost accounting period.

The following article contains practical business system guidance regarding building a Modified CAS Coverage Small Business System for federal government contracting:

<http://www.smalltofeds.com/2010/10/managing-risk-in-small-business-federal.html>

SUMMARY

Read the above government requirements and business system development guidance, and then give your selected method of business management the Modified CAS litmus test. Make a judgment that it is the best for your company and try it out on DCAA. If they have problems with the approach you can adjust it.

The bottom line objective is that you wish government approval going forward so that your rates are accepted in proposals, your audits have a satisfactory outcome and you get paid when you submit a billing. Without those critical success factors the business cannot operate.

46. FEDERAL GOVERNMENT CONTRACTING SMALL BUSINESS SYSTEMS DEVELOPMENT

INTRODUCTION

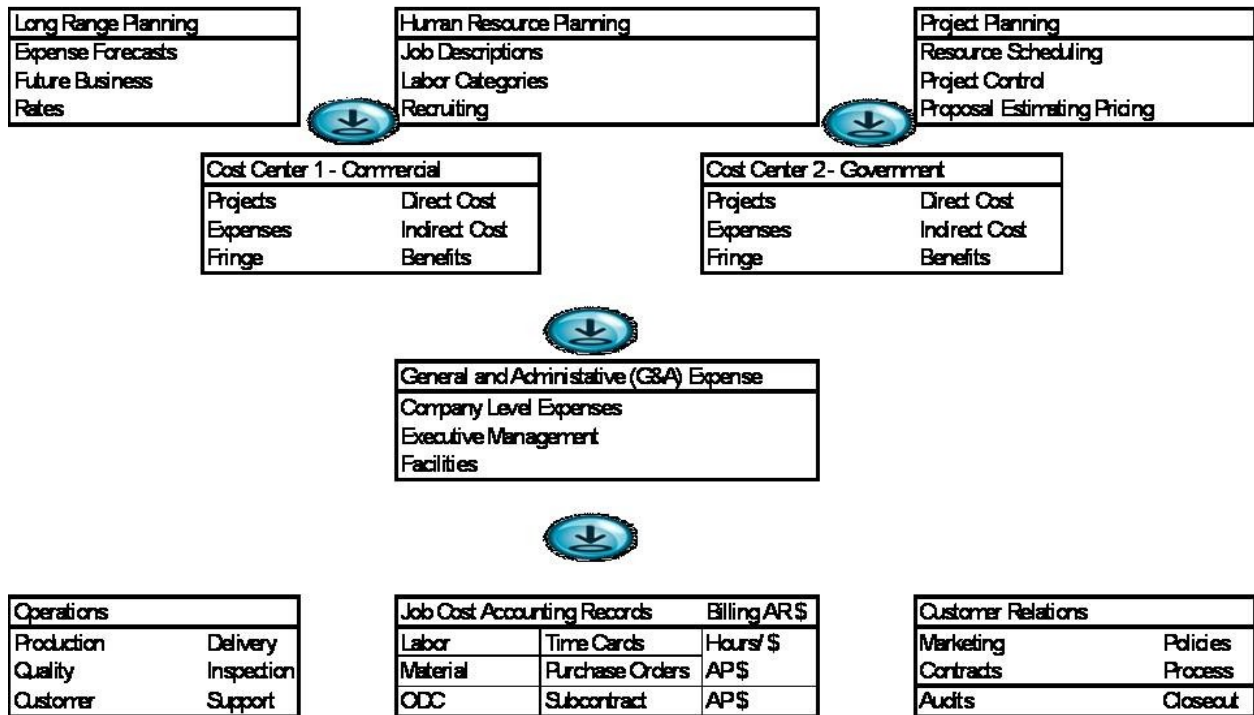
Waiting for a contract award to achieve a government contracting business process is not advisable. A win may not happen at all without addressing the structure and process requirements in your proposal to convince the customer you understand his business environment.

If you are not prepared in advance and you are fortunate enough to win, then in a very short time frame you will have to evolve your business system to perform on your contract and submit a billing.

This article will discuss a framework for a small enterprise to develop a business system in service contracting, which is the most frequent venue utilized to enter the government market.

The following diagram depicts the major elements of a suggested integrated template:

If you are a small startup organization, your process and automation may be quite rudi-



mentary and simple in addressing the above structure and functions. If your company is in a high growth mode with many transactions, projects and details your processes and computerization will be more complex.

The point to remember is the need to overlay the above on your existing company for the unique products and services you provide, and then address how to fit, supplement, or accommodate the necessary adjustments to support contracting to the government.

Please read the following articles on the highlighted topics for details that may assist in evolving your unique business processes to support government contracting:

Long Range Planning

<http://www.smalltofeds.com/2009/01/should-you-consider-small-business.html>
<http://www.smalltofeds.com/2008/08/provisional-indirect-rates-in-small.html>
<http://www.smalltofeds.com/2009/05/small-business-teamiing-in-government.html>
<http://www.smalltofeds.com/2008/09/protecting-intellectual-property-and.html>

Human Resource Planning

<http://www.smalltofeds.com/2009/05/generic-contingent-hire-agreement.html>

Project Planning

<http://www.smalltofeds.com/2008/05/earned-value-management-systems.html>
<http://www.smalltofeds.com/2009/08/contract-baseline-management-in-small.html>

Cost Centers, General and Administrative , Operations, Job Cost Records

<http://www.smalltofeds.com/2008/07/small-business-government-contracting.html>
<http://www.smalltofeds.com/2008/03/establishing-far-and-cas-compliant.html>
<http://www.smalltofeds.com/2008/02/dcaa-audits-and-small-business-job-cost.html>

Customer Relations

<http://www.smalltofeds.com/2009/09/what-small-business-should-know-about.html>
<http://www.smalltofeds.com/2009/07/multiple-front-marketing-in-small.html>
<http://www.smalltofeds.com/2009/06/federal-government-contracting-small.html>

SUMMARY

You may wish to download the free book and related documents at the "Box Net" cube in the left margin of this site for further information and live examples.

Remember, small business federal government contracting is not rocket science - it is taking what you do well in the commercial environment and applying it in a slightly different manner from a business perspective to accommodate the way the federal government does business.

47. MANAGING RISK IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACT BUSINESS SYSTEMS DEVELOPMENT

INTRODUCTION

Most small enterprises must undertake some form of business process augmentation when entering federal government contracting.

A previous article at this site addressed an overview of this challenge:

<http://www.smalltofeds.com/2009/09/federal-government-contracting-small.html>

The natural inclination for small business is to immediately jump to buying computer software tools in an effort to expedite the business system growth process. That propensity is often enhanced by software companies who maintain their product is “DCAA Compliant”, has been “Validated by the Government as an Earned Value Management System (EVMS)” and other similar claims.

This article will address cautions and tips regarding an immediate jump to software as a means of growing a government contract business system. It will recommend some rules of thumb to insure wise business system development decisions, specific to your company and managing the associated risks.

UNDERSTANDING THE REQUIREMENTS

The US Government learned decades ago that it cannot impose specific business systems on contractors. One of the last great attempts to do so was the Program Evaluation and Review Technique (PERT). It was abandoned in the late 1950's and early 1960's and replaced by a set of industry criteria now known as Earned Value Management Systems (EVMS).

Similarly, the Federal Government Cost Accounting Standards Board (CASB) determined that job cost accounting systems could not be imposed on contractors. Over the years they have developed and maintained a set of Cost Accounting Standards (CAS) which governs requirements for accounting on government contracts.

The GSA and similar agencies maintain policies on travel, human resources and wage/rate determinations that are not specific systems, but minimum standards as well. A small business entering federal government contracting should research the above and similar requirements in such areas as quality assurance, inspection and acceptance and export management.

PROCESS COMES FIRST – MAXIMIZE WHAT YOU HAVE

Given a thorough understanding of the requirements for a government contract business system that fills the need for your specific product or service delivery, the next step is to examine existing processes to determine if they can meet the need or be minimally supplemented to do so.

Finding a need for major process changes or enhancements in the existing business system is the beginning of a requirements analysis to determine the labor, process change, planning, costs and eventual selection of new automated tools that fit the company and that need.

Many start-ups and small enterprises find they can crutch their existing job cost accounting system for service contracts with spread sheets instead of buying an expensive, data base oriented, COTS software package initially. As the company grows into government contracting and the number of transactions and associated revenue warrants the expense, the firm can then evaluate more expensive packaged software tools and ease into them with a plan to minimize disruption.

A government contract award drives many things in government business, but small firms cannot wait until that event to position at least the minimal processes necessary to perform, price new business, function lawfully in the human resources area and submit supportable detail in billings.

Please see the following articles for guidance on minimal business system requirements for small business federal government contacting.

<http://www.smalltofeds.com/2010/07/what-is-small-business-federal.html>

<http://www.smalltofeds.com/2010/05/pricing-small-business-federal.html>

<http://www.smalltofeds.com/2010/03/small-business-job-cost-accounting.html>

RULES OF THUMB FOR SELECTING AUTOMATED TOOLS

From strategic planning to marketing, from forward pricing to job cost accounting, from subcontracting and vendor/contractor management to human resources policies, the small firm finds itself undergoing a business system design project upon entering the government contracting venue.

Understand the requirements first, review existing processes and tools next, develop a thorough requirements statement of what must be done in the way of enhancements and then consider automating. While performing your analysis keeping the following 5 rules of thumb in mind:

1. An electronic computer software package is not a system. One cannot acquire a system by acquiring computer capability.

2. One acquires a system by conducting systems analysis, achieving a design and processes by working with the people who will run the system. This is hard work and time consuming. Processes are improved and made more efficient by modifying user behavior not by automating it.

3. Once system and analysis and system design are complete one chooses tools to assist in running the system. The adequacy of a computer tool is driven by the requirements of the most efficient system design.

4. The biggest mistake implementation teams make is to believe they are buying a system when they buy a software tool or let the software drive the systems analysis process. That is like asking a mechanic to drive a wrench from New York to St. Louis. It has resulted in millions of dollars wasted and plummeting efficiency in many organizations, large and small.

5. It is necessary to design a system and processes unique to the company to meet user requirements before going shopping for computer tools. If you do not you will be pigeon-holing your company into a COTS mentality and become a slave to the company that owns the source code. If you want anything changed it costs a big buck.

**48. PRICING SMALL BUSINESS FEDERAL GOVERNMENT SERVICE
48. PRICING SERVICE CONTRACTS
Integrate Long-term Company Strategy
With Short Term Proposal Pricing Objectives
For Success**

INTRODUCTION

Small businesses entering or growing into federal contracting often struggle with developing a pricing approach. They must design a pricing structure to pass an audit and win competitively. A winning strategy for federal services contracting must involve a view of the horizon as well as the instant bid on the table.

If you are a small enterprise selling off-the-shelf commercial items under FAR Part 12 or marketing commercial products on a GSA schedule, you may be initially challenged by the government contracting venue. With persistence you will establish selling relationships through agencies and prime contractors. Your pricing challenge is minimal. A service contractor faces a far greater challenge in understanding the nature of government contract pricing and winning at it.

Strategic thinking must therefore be applied to structuring a government service contracting cost center in your company. It must involve long term planning and designing a business system as well as establishing rates and factors to bid new work.

LONG TERM COMPANY STRATEGY

Build a Business System With Pricing in Mind:

We have previously discussed the basics of small business government contracting business system design:

<http://www.smalltofeds.com/2010/03/small-business-job-cost-accounting.html>

The structure or your pricing approach from the cost element level through burdens must use the same template as your job cost accounting and billing. The parallel mapping provides the consistency required to pass audits or get your billings approved on a service contract.

Please read the above article and its related references. Then design your processes recognizing the guidance there and applying it to your company organization, and the way you produce your supplies and services:

Sculpt the DCAA Auditor

As you begin submitting government contracting proposals you will encounter your local DCAA audit office. They learn about your company by auditing your cost proposal rates, job cost processes and systems, billings and contract closeouts.

Keep in mind that you are shaping opinions in these encounters on the part of these government personnel that will influence your future and be passed on in reports to contracting officers. Your unique company business system structure must be carefully explained to them against what they know best; their DCAA Audit manual and FAR Cost Accounting Standards:

<http://www.smalltofeds.com/2008/02/dcaa-audits-and-small-business-job-cost.html>

Protect Rate Information

Your fully loaded rates will appear on your GSA schedule in the public domain, in sub-contracts from prime contractors and in data acquired under the Freedom of Information Act (FOIA) by competitors.

It is generally recognized by all industries participating in federal government contracting that internal overhead and G&A rates and the data that support them are proprietary data. The reason for the proprietary nature of rate data between companies is that in government work firms are teaming with each other exclusively on one project and competing against each other on additional contracts or projects at the same time.

Companies do not disclose the details of their rates to other companies and they do not expect to see another company's proprietary rate information. So companies view each others rate information on a fully loaded basis, meaning the total of the base cost, any proprietary indirect cost and an agreed upon profit percent.

If a prime contractor requests that subcontractor proprietary rate information be supplied with a proposal the detail should be double wrapped and the package stamped, 'Government Eyes Only'. The prime will then hand the package off to DCAA without opening it and receive only the fully loaded result of the burdened rate pricing.

For further information on intellectual property protection and protective markings on government contract proposals please see the following article:

<http://www.smalltofeds.com/2008/09/protecting-intellectual-property-and.html>

Recognize Overhead and G&A Rates Are Critical

Assuming your competition pays a generally similar labor rate to their employees as you do and that fringe costs about the same for everyone, then overhead and G&A are what wins and loses contracts.

Please read the following articles carefully with regard to long range planning and setting your overhead and G&A rates:

<http://www.smalltofeds.com/2008/03/establishing-far-and-cas-compliant.html>

<http://www.smalltofeds.com/2008/08/provisional-indirect-rates-in-small.html>

Keep in mind that if you are performing work inside a government facility the government will expect to be charged a lower overhead rate than if you were paying the space and occupancy costs and the light bill. This is normally achieved by establishing a separate cost center for "On site" (Internal to government quarters) work with lower overhead expenses applied to project direct labor dollars in that cost center.

Price Set Aside Contracts the Same as Full and Open Competitions

If you are a small business lucky enough to receive a sole source set aside contract under an 8(a) or Hub Zone award, or if you are participating in limited competition under a small business set aside designation, use the same sharp pencil you use on the full and open market. Your goal is to compete for the long haul and inflating estimates on particular jobs due to limited competition has an inflationary effect on your business as a whole.

Your company past performance is being constantly evaluated by the government and prime contractor community. Consistency attains and retains new business. You will eventually grow to the point where set asides and sole sourcing will no longer be available; prepare early.

Know the True Value of Your Proposal

Develop risk thresholds (ceiling and floor) for your bids. The ceiling is the price for which you can bid a job, perform to meet specifications and win. A floor is the lowest possible price for which you can accept a contract and survive.

Do not bid or be negotiated out of these thresholds. "Buying In" does not work and sacrificing the future of your company by "Low Balling" cost proposals and hoping to get well on scope changes later is dangerous.

In government contracting the only worse scenario than losing a contract is winning it, performing poorly (cost, schedule or technical) and getting a black eye on your company past performance record that takes a long time to go away.

Understand a Proposal is the Opening Chapter a Baseline for Your Contract

Your proposal represents an initial offer to a government agency or a prime contractor. Please read the following articles on how this baseline is initially set and controlled through the negotiation process and ultimately through careful contract management.

<http://www.smalltofeds.com/2009/08/contract-baseline-management-in-small.html>
<http://www.smalltofeds.com/2007/03/small-business-federal-government.html>

SHORT TERM PROPOSAL OBJECTIVES

Make Bid/No Bid Decisions Wisely

Conduct your bid/no bid decisions effectively. Please see the bid/no bid analysis process at the beginning of the following article:

<http://www.smalltofeds.com/2007/02/federal-government-contract-proposal.html>

Be Conservative in Rough Order of Magnitude Pricing

A common government planning technique in the early phases of marketing is to ask questions and review and approve a concept paper by a company then informally request for "Planning Purposes", a rough order of magnitude cost estimate (ROM).

If you provide a ROM be very careful. It tends to get cast in concrete in the customer's mind, even though it is not the final, formal proposal. Make it conservative in cost content and schedule duration, then plan to beat it with your formal proposal.

Make sure you caveat the ROM if you are asked for it with the statement in your cover letter that it is for planning purposes only and is not a commitment on the part of your company. State that you will be happy to make a full formal proposal/commitment upon receipt of a formal RFP from an authorized contracting officer. Keep in mind that contracting officers are the only people who can commit the government:

<http://www.smalltofeds.com/2007/06/federal-government-contracting-customer.html>

The government usually goes forward with the concept paper and the ROM for approval of the funding necessary for the job. The "Agency Higher Ups" either give the project personnel the approval to do a set aside or they require a competitive procurement.

You may want to read the following article on Statements of Work:

<http://www.smalltofeds.com/2007/10/contract-statement-of-work-and-technical.html>

Know the Difference Between Firm, Fixed Price, Time and Materials and Cost Plus Contracting

During the solicitation and proposal process the contract type is specified.

Firm, Fixed Price (FFP) is the riskiest type of contracting and should be undertaken only when you have a definitive grasp of a precise statement of work with known variables and end products. You should have achieved similar work scope in the past or be delivering follow-on products and services that are mature in nature to undertake a firm, fixed price contract.

FFP is particularly risky in software development contracts or high technology program pressing the state of the art. You will receive no more in the form of funding than your bid price on a firm, fixed price contract.

Time and Materials (T&M) contracting places the risk on the government and is suited to long term service contracts of a development nature. T&M may be contracted with fixed labor rates, making the hours and pass through materials and other direct costs the only variables.

Cost Plus (CP) contracting is the least risky of all contract types and you are assured of receiving every dollar of cost incurred under this type of contract.

The lower the risk to the contractor the lower the expected negotiated profit rate you can expect, since the government considers risk the principal factor in profit negotiation.

For further explanation of contract types in more detail, please see the following article:

<http://www.smalltofeds.com/2008/04/federal-government-contract-types.html>

Develop a Price Profile of the Competition

Use a copy of your own forward pricing long range plan (LRP) to model your strongest competitors. Profile your best intelligence regarding their size, location, contract base and estimated overhead and G&A expenses. Then interpolate, from your knowledge of the market, their labor and fringe costs, as well as other direct costs as you prepare your proposal. Incorporate any unique approaches you estimate your competition may offer that impact cost.

Adjust your competitor cost model to perform "What If Analysis" during your risk assessment and proposal review process. For an example of an LRP cost model please see the Box Net Cube in the left margin of this site. It is Appendix B to the book, "Small Business Federal Government Contracting" and is available as a free download in

Adobe format.

Understand “Best Value” Source Selection

When the government declares a “Best Value” proposal award process the agency will perform a weighted trade study of cost versus technical and management factors in reviewing proposals. They will announce the weight of each factor in relative terms within the solicitation so contractors can focus on the most important elements.

What best value means quite simply is that if you are the low price bidder you may not win. If a competitor proposes a superior technical and management approach, a higher weighted rating in those factors may offset an otherwise non-competitive bid price, resulting in an award. This is a fact you must keep in mind when preparing your own proposal. In short you must perform your own trade study on your own bid.

Past performance has also become a significant weight factor in proposal evaluations in recent years. To address this challenge, please see the following article:

<http://www.smalltofeds.com/2008/07/small-business-government-contracting.html>

A balanced proposal, with specific, heavy emphasis on government-designated weight factors and an economical, yet realistic cost/price usually wins. Offsetting weaknesses in any designated government weighted area by proposing excellence in other weighted areas is vital.

Beware of Unallowable Costs

Over the years the federal government has determined that certain costs cannot be allowed in prices, cost reimbursements or settlements under contracts with the US Government. The government is unwilling to pay for these costs as direct charges to federal government contracts or through indirect expense pools applied to federal government contracts.

A company is not prohibited from incurring unallowable costs, but they cannot be recovered either directly or indirectly under federal government contracts. To manage unallowable costs, separate accounts must be established for these type expenses and they must not be priced directly into federal government contracts during the proposal process.

Such costs cannot be made a part of the expense pools which are applied to federal government contracts through an overhead, material handling or G&A cost allocation at accounting period close or during forward pricing rate planning. For more detail on unallowable costs please see the following article:

<http://www.smalltofeds.com/2007/04/unallowable-costs-under-federal.html>

Integrate Pricing With Technical and Management Approaches

Establish price targets as soon as possible for major tasks, evolve a program plan, or if you are bidding a T&M, IDIQ type program develop a sample work order for a typical representative effort.

As the technical and management proposal move toward completion, use established checkpoints to evaluate the efficiency of your cost estimate, escalation factors, labor, material and other direct costs. Then apply your indirect rates and subject your total proposal to a credibility check with regard to a believable cost estimate considering your solution and its time frame.

Run your competition price model and bring in some outside experts to review the end product proposal "Cold" before it is submitted.

Manage Best and Final Offers (BAFO) Carefully

Most government solicitations require a format and terms and conditions with submission that permit contract award without further discussion. However, many involve a down-select process, briefings by those selected in the "Competitive Range", a call for best and final offer (BAFO) or negotiation to achieve a final price.

The best and final offer period is a sensitive time. Most contracting agencies that call for a BAFO will cite weaknesses or concerns in the selected contractor proposals. They wish to hear about solutions to those weaknesses during BAFO briefings and require a re-submitted offer to correct them. The price may be adjusted as well and that is a key consideration. Pay particular attention to the way the BAFO instructions and concerns, specific to your down-selection, are worded. Look for hints that indicate critical opinion about your pricing, and then adjust your costs.

Consider the cost, schedule, technical and past performance implications of the BAFO request letter from the government and revise your proposal by the required submission date. Close the loop on all matters with your suppliers, subcontractors and prime contractors, and then conduct your briefing to the customer when it is scheduled. Present a united front to win. Your price should be your best. You will not be offered a chance to bid another competitively on that program.

On some procurements you may be asked to undertake additional discussions to determine final contract pricing. Please see the negotiation template at the following article for guidance on that process:

<http://www.smalltofeds.com/2007/03/small-business-federal-government.html>

SUMMARY

This discussion has conveyed how pricing should be a natural outgrowth of the organization structure, market strategy, competitive analysis, business system design and long range planning.

We have further explained how your long and short term pricing factors should be integrated with the management and technical elements of any given proposal. Take the long and the short view of your business by integrating long-term company strategy with short term proposal objectives

49. UNALLOWABLE COSTS UNDER FEDERAL GOVERNMENT CONTRACTS

50.

I. INTRODUCTION:

Over the years the federal government has determined that certain costs cannot be allowed in prices, cost reimbursements or settlements under contracts with the US Government. The government is unwilling to pay for these costs as direct charges to federal government contracts or through indirect expense pools applied to federal government contracts. A company is not prohibited from incurring unallowable costs, but they cannot be recovered either directly or indirectly under federal government contracts. To manage unallowable costs, separate accounts must be established for these type expenses and they must not be priced directly into federal government contracts during the proposal process. Such costs cannot be made a part of the expense pools which are applied to federal government contracts through an overhead, material handling or G&A cost allocation at accounting period close or during forward pricing rate planning.

II. UNALLOWABLE COST CATEGORIES:

- A. Advertising Costs are allowable only if they are necessary to meet the requirements of the contract performance.
- B. Public Relations Costs are unallowable except for (1) costs specifically required by government contracts, (2) cost of communicating with the public and press pertaining to specific accomplishments which result from government contracts or (3) costs of conducting communication and liaison necessary to keep the public informed on matters of public concern such as notices of awards, financial matters, etc.
- C. Alcoholic Beverage Costs are unallowable.
- D. Bad Debt Costs are unallowable.
- E. Automobile Costs for Personal Use are unallowable.
- F. Defense and Prosecution of Criminal and Civil Proceedings, Claims Appeals and Patent Infringement are generally unallowable.
- G. Donations and Contributions are unallowable.
- H. Entertainment Costs are unallowable.
- I. Executive Lobbying Costs Incurred in Attempting to Improperly Influence either Di-

rectly or Indirectly an Employee or Officer of the Federal Government Regarding a Contract are unallowable.

J. Fines and Penalties resulting from failure of the company to comply with federal, state, local or foreign laws and regulations are unallowable.

K. Goods and Services Cost for Personal Use are unallowable.

L. Personal Housing and Living Expenses are unallowable. (Not to be confused with direct travel costs which are allowable)

M. Insurance Costs to Protect Against Defects in Materials or Workmanship are unallowable.

N. Interest and Investment Management Costs are unallowable except for cost related to the physical custody and control of monies and securities and for interest cost paid to external parties for assets (buildings and equipment) used to support government contracts.

O. Losses on Government or Other Contracts are unallowable.

P. Membership Costs in Civic, Community Organizations, Country Clubs or Social or Dining Clubs are unallowable.

Q. Pre-Contract Costs, unless approved by the Contracting Agency are unallowable.

R. Airfare Travel Costs in Excess of the Lowest Available Commercial Discount or Standard Coach Airfare are unallowable.

50. LIMITATION OF FUNDS AND FUNDING EXPOSURE

Many federal contracts are funded incrementally, usually based on the government fiscal year that runs from 1 October to 30 September. Although the government may negotiate dollar price ceilings for cost plus and time and materials contracts or firm, fixed total price arrangements, the contracts themselves may be incrementally funded, particularly if they extend over two government fiscal years. A contract may contain negotiated prices or a cost ceiling but also specify an incremental funding value.

The contractor is required to inform the government when actual costs incurred plus obligations to suppliers or payroll on a specific contract reach certain thresholds of the current incremental funding specified in the contract (usually 80%). The government is then obligated to further fund the contract. In the event the contract is not funded further, the contractor has the right to stop work before he exceeds the incremental funding. Some contractors choose to operate on "risk," continuing to perform on a contract while exceeding the incremental funding in booked cost and obligations. The government is under no obligation to reimburse the contractor for amounts exceeding incremental funding. Nearing the end of a government fiscal year, a contractor may find delays in funding reaching all the way to congress. This situation must be managed with the government contracting officer.

If a contract is not funded to continue and the contractor has performed to date in accordance with all required terms, the government retains the right to terminate the contract for the convenience of the government. This requires a special notification to the contractor from the government and usually occurs due to changes in government priorities. The contractor may then bill the government for all costs and obligations to date, plus any direct and indirect extraordinary costs associated with business disruption, termination administration, employee layoff cost and the like. Terminations for convenience are very expensive for the government. Nevertheless, limitation of funds and funding exposure must be carefully monitored by an astute small business.

To properly manage incremental funding, the business system must be capable of accounting monthly for all direct and indirect costs on each contract, plus commitments to suppliers and employees in the form of open purchase orders and unpaid or unposted payroll.

Your internal release document should specify the current incremental funding if your contract is not fully funded at award. Further revisions to your release documentation should convey receipt of contract amendments from the government that supply additional required funding to the contract as performance proceeds. Requests for increases in incremental funding are required when the actual booked cost plus commitments to suppliers reaches 80% of the current funding on the contract.

In the event the contract is not adequately funded incrementally by the government, a revision to your internal release documentation should specify a stop work order after you have notified your customer that you plan to cease performance on the contract due to lack of sufficient funding. Notification should be provided to suppliers under your contract with a stop work to avoid their incurring additional costs for which you are not receiving funding from the government. Be specific with a stop work date to these suppliers.

In the event the contract is terminated for convenience, a new revision to your internal release document should set up a special project and identifying number for accumulating costs specifically associated with the termination. These costs will be billed separately to the government under a termination contract modification and should be carefully recorded. Both direct costs and indirect costs at all levels of the company may be charged direct to a contract termination for convenience. You can expect your suppliers to bill for cost to date and termination cost as well. You will pass on those costs to the government in your proposal for termination for convenience of the government. The government will assume ownership of all inventory and work in process on terminated contracts. Termination proposals, audits, negotiations and contract closeout can be lengthy and complicated proceedings.

51. ESTABLISHING FAR AND CAS COMPLIANT SMALL BUSINESS SYSTEMS FOR FEDERAL GOVERNMENT CONTRACTS

I. INTRODUCTION

To effectively market a federal government contract a small business must sell on the basis of having a business system as well as technical performance infrastructure ready to run the job when a contract proposal is submitted. This dual requirement is where many small businesses fall short in their federal government contract start up planning.

Parallel thinking is required to plan for government project technical effort against a template of necessary business process infrastructure, driven by introducing Federal Acquisition Regulations (FAR) into the company. Key elements of the necessary business system infrastructure are discussed in this article which assumes that you are in the federal government services contracting business, that you plan to price your services at an hourly rate and sell them by labor categories with professional job descriptions to perform the government's statement of work and bill by the hour. This article also assumes that you are not contracting under FAR Part 12, "Commercial Contracting".

A. Labor Categories

Each skill set in the company must be specified and defined as chargeable directly to a contract, or indirectly to a cost center overhead, a material handling pool or a general and administrative pool. Each labor category must have a job description and a prospective salary range for proposal purposes.

B. Cost Center

A Cost Center is a single business entity within the company, organized for a group of business lines and clients with close similarities for technical and business management purposes. Cost centers are also driven by geographic location and the requirement to separate commercial from federal government business. Projects performed in government facilities may also require a separate cost center, since many of the associated expenses for such operations are born by the government. Cost centers usually have individual subsidiary ledgers, balance sheets and profit and loss statements and are summarized monthly to a company total. Each cost center must have job cost accounting for the contracts residing there and a cost center unique overhead rate.

Examples:

Commercial Cost Center

Federal Government Cost Center

Government Site Unique Cost Center

C. Annual Overhead Rate

An overhead pool is made up of individual Cost Center indirect expenses projected for a given year divided by the projected Cost Center direct labor dollars for that year to determine a rate. Typical Cost Center Overhead general ledger expenses are those which cannot be effectively charged direct to contracts. These include Cost Center management, building lease, telephone, fringe benefits, electricity, capital equipment, depreciation, and the like.

THUS: 2008 Overhead (OH) =

$$\frac{2008 \text{ Gen Indirect Exp for cost center} = \$459,800}{2008 \text{ Projected Dir. Labor \$for cost center} = \$418,000} = 110\% \text{ OH Rate}$$

The estimated annual Cost Center Overhead Rate is applied to direct labor cost estimates to price labor cost through overhead for 2008 for the Cost Center. When a contract is awarded, actual overhead expenses are allocated monthly to direct labor by contract on the basis of direct labor dollars incurred. Projected overhead rates are adjusted based on actual total cost center experience as the year progresses.

D. Annual Material Handling Rate (if required)

Corporate wide expenses specifically associated with buying, storing and shipping material for a given year divided by the projected direct material dollars projected company-wide for that year. Not all companies have business that is material intensive enough to warrant a separate pool for material handling. Where extensive buying or subcontracting is conducted out of the corporate headquarters and inventory and shipping labor are high, a material handling pool is permitted by the government when it is not administratively possible to charge these expenses directly to contracts.

The estimated annual Corporate Material Handling Rate is applied to direct material cost estimates to price material for all Cost Centers. When a contract is awarded, actual material handling expenses are allocated monthly to direct material by contract on the basis of direct material dollars incurred. The projected material-handling rate is adjusted based on actual total company experience as the year progresses.

E. Annual General and Administrative Rate (G&A)

The corporate indirect expenses projected for a given year divided by the total projected direct cost plus overheads for all cost centers for that year. Typical G&A general ledger expenses include costs which cannot be charged direct to contracts or to cost center overhead expenses such as corporate executive management, headquarters building leases, legal expenses, company wide insurance, corporate advertising, and the like.

II. MANAGEMENT FACTORS

A. Success will be determined by managing the numerator in each of the above equations and winning or maintaining the projected direct cost programs in the annual denominator. If expenses increase due to unforeseen events or if the company loses more projects than planned in the annual denominator base, the associated rate will go up for estimating purposes and under cost plus or time and material contracts the rate billed to the government will also increase. Existing fixed price contracts under these circumstances will become less profitable. Pricing for future fixed price contracts must reflect the increased rates being experienced to avoid further losses.

B. Correspondingly, if expenses decrease due to unforeseen events/good management or if the company wins or grows more projects than planned in the annual denominator base, the associated rate will decrease for estimating purposes and under cost plus or time and material contracts the rate billed to the government will also decrease. Existing fixed price contracts will become more profitable. Pricing for future fixed price contracts must reflect the decreased rates being experienced.

C. For time and material and cost plus contracts, monthly billing rates utilized are "Provisional Rates" that the contractor is free to change based on experience as long as he informs contracting officers and the local Defense Contract Audit Agency (DCAA) of the changes and reasons for the changes can be demonstrated. Before time and material and cost plus contracts can be closed out, provisional rates must be adjusted to reflect actual rates experienced. The contractor will owe the government if provisional billings have been higher than actual cost history. Correspondingly, if the actual rates for cost plus or time and materials contracts have been higher than the provisional rates billed by the contractor, the government will owe the contractor at closeout. Firm, Fixed Price Contracts are not billed based on provisional or actual rates. They are billed at negotiated fixed prices by line item at contract award and paid upon final delivery and acceptance or through monthly progress payments based on incurred cost with a percent of payment retention by the government until deliveries are complete. Fixed rate contracts are billed on a monthly basis through hours in-

curred. The hourly rates are fixed for the contract term and do not change.

COST ESTIMATING/COST ACCOUNTING EXAMPLE

A. Consider an 12-month project priced in a hypothetical small business utilizing forward pricing "Provisional Rates." The contract begins in July of 2008 and continues to July of 2009. Direct labor rates are escalated between 2008 and 2009 by 3.5% based on the Consumer Price Index. The company decides to keep the indirect rates for Overhead and G&A the same for pricing purposes in 2008 and 2009. The company has no Material Handling Pool and charges purchasing, inventory and shipping costs direct to contracts.

B. This government contractor maintains Overhead and G&A rate databases in Excel by month by year to forward price projects such as the one in this example. The databases all utilize the same generic chart of expense accounts as a template for the Cost Center Overhead and G&A monthly expense forecasts (equation numerators). The project is priced in cost center 1 at an overhead rate of 110% and a corporate G&A rate of 10%.

C. Cost Center Direct Labor forecasts in the databases are projected by hours and salary dollars for each existing and anticipated project and then summarized to determine the equation denominator which when divided into the Cost Center Numerator B, above) yields the Cost Center Overhead forecast by month by year. Direct Labor is then burdened by the projected Cost Center Overhead and added to Material and Travel to yield a total Cost Center business summary through Overhead.

D. The G&A rate data base summarizes total direct labor through overhead, material and travel cost for all cost centers (equation denominator) and divides it into the total corporate G&A expense (equation numerator) The equation result yields the projected G&A rate by month by year. All cost center labor through overhead, material and travel are then summarized and burdened through G&A to forecast a total cost projection by Cost Center at "Provisional Overhead and G&A Rates.

E. A copy of the annual baseline projected rate database is adjusted with actual expense data each month in the numerator after closing. The denominator for the month is also updated with actual existing and new business developments at the cost center level and G&A monthly actuals at the corporate level. The resulting actual rate experience is then analyzed for trends as the year proceeds and utilized for making potential adjustments in provisional rates. When provisional rate changes are necessary, the government is notified in advance and provided with trend information justifying the rate change. Upon approval by the government, the baseline forecast is adjusted and utilized for billing on T&M and Cost Plus Contracts. The adjusted rates are also utilized to price all future projects. DCAA does not audit management decisions. They simply check the math.

F. Rate databases are usually fully detailed by month for the current year and 1-2 years into the future. Years 3-5 typically have summarized assumptions through use of escalation factors. Bids for out years 5-10 if required by the government definitely utilize escalation factors. Very few government contractors are willing to bid on a firm, fixed price basis beyond out year 5.

G. To comply with Cost Accounting Standards 401 and 402, this company must set up each new government contract on job cost accounting in the identical manner in which it was proposed; in effect identifying direct labor, direct material and other direct costs to each contract monthly and allocating overhead and G&A utilizing the same numerator and denominator relationships upon which the contract was originally estimated.

H. The larger the direct cost incurred on a contract in this company the greater the share of the cost center overhead and corporate G&A it will incur.

I. The entire content of this company's business system is subject to audit and verification by the Defense Contract Audit Agency (DCAA) against Cost Accounting Standards 401 and 402. DCAA validates company records by requiring "Incurred Cost Submissions" from this contractor. The submissions validate final rates for cost plus and time and material contract closeouts. Fixed price contracts are closed out when final delivery is received and accepted. Retention on monthly progress payments under fixed price contracts is released at closeout.

SUMMARY:

The software tools discussed in the February posting at this blog are designed to assist you in running the above process from a job cost accounting perspective. However, they must be set-up to reflect the unique way you are organized and they must reflect your specific business plans as discussed in this article. They will not do that for you.

Illustrations of the rates, pricing and the long range plan utilized in the above example are available in Chapters 45 and 51 through 53 of this book and appendices A&B.

52. SMALL BUSINESS JOB COST ACCOUNTING BASICS FOR FEDERAL GOVERNMENT SERVICE CONTRACTS

INTRODUCTION

Many clients in the start-up service contracting business to the federal government have contacted SCORE recently experiencing DCAA audit difficulties, suspended billings or negative marks on pricing proposals for not having addressed job cost accounting and business system issues involving Federal Acquisition Regulation (FAR) Cost Accounting Standards (CAS) requirements. This article will address the basics of resolving those issues in a service contracting start-up environment.

"Small to Feds" has addressed the requirements of CAS and the associated business system design requirements previously in the following articles that are suggested for review as refreshers:

<http://www.smalltofeds.com/2008/03/establishing-far-and-cas-compliant.html>

<http://www.smalltofeds.com/2009/09/federal-government-contracting-small.html>

<http://www.smalltofeds.com/2008/02/dcaa-audits-and-small-business-job-cost.html>

<http://www.smalltofeds.com/2008/08/provisional-indirect-rates-in-small.html>

DEFINING YOUR COMPANY AND ITS COMPLIANT JOB COST ACCOUNTING - RULES OF THE GAME

Please view the below matters in the context of your business system design at the cost element and job description level:

You must consider the job cost accounting implications of the government contract environment; i.e how do the individual labor charges every day on time cards for the company employees and management get booked to the correct accounts or expense pools and do they or do they not become part of the labor distribution directly to contracts or indirectly through overhead and G&A applications at month end (in effect is the government billed for the cost?).

In most small start-ups the best way to handle this is to write job descriptions for every position, including the owners and executives as well as other employees. Each job description is declared chargeable as direct only, indirect only or in rare exceptions, both direct and indirect chargeable.

Job descriptions are also declared salaried or hourly, exempt and non-exempt under the Fair Labor Standards Act, which drives eligibility for time and one half for overtime. All company personnel are furnished copies of job descriptions and informed of their direct or indirect, salaried or hourly status as a function of their employment offers. (You should generate retroactive offer letters for everyone in the company, have all personnel accept them in writing and put the letters and the job descriptions in the company personnel files for audit purposes)

Job descriptions are assigned to labor cost element codes in the job cost system (as opposed to other codes for materials, subcontract, travel and other direct costs that may require separate cost element codes to distinguish them for accounting purposes. A direct charge job description will always have a contract charge number every day for every hour of work (typically technical performers) This usually drives the employee eligibility for overtime pay for hours in excess of 40. A company policy should be established early for this matter. Most companies pay straight time for hours in excess of 40 for salaried direct charge personnel. Exceptions are hourly non-exempt personnel who must be paid time and one half under the law.

An indirect job description performer will charge every day on a time card to an overhead or G&A account and the associated labor cost will become part of expenses that are distributed at month end to all contracts, based on the direct labor dollar content of each contract for the accounting period (typically secretaries, administration personnel and the like charge to overhead and the owners and executives charge to G&A (unless an executive is working exclusively in an individual overhead cost center - that person would then charge the overhead charge number for that cost center or directly to a project if performing project-direct effort).

Exceptions to the above would be where a direct charge employee has no contract home and his labor must be charged somewhere. In that instance he would charge to a company overhead account or G&A account outside the overhead pool and his or her labor would not become part of the allocation to contracts, effectively making it come out of the company bottom line (profit). This situation normally drives layoffs or finding the person a contract home to charge.

Labor donated to the company as a form of loan must also be charged in the exceptions manner discussed above (loan labor liability account) and may not be charged or recovered via a contract bill to the government directly or as part of an overhead allocation. DCCA really goes looking for this type of thing.

Where an executive normally charging to an overhead or G&A pool, is a key person on a contract or performing direct effort on a contract for parts of his or her day, that person would charge the contract charge numbers for those efforts and the overhead or

G&A accounts for company business of an indirect nature.

CHECKLIST

The above rules of the game (disclosure practices in DCAA parlance) normally force several business system tangibles. It is suggested that you generate the following as a minimum in your startup preparations for demonstration during a proposal or fact finding audit:

1. Time Cards with a time card policy requiring they be filled out daily and turned in and approved by a supervisor weekly, then booked into the accounting system weekly.
2. Expense Reports bearing charge numbers for accounting as direct or indirect expenses.
3. Written Purchase orders to suppliers bearing charge numbers for accounting as direct or indirect purchases
4. Labor Job Descriptions - specially ear marked in the manner discussed above.
5. Cost element assignments for accounting purposes for 1-4, above.
6. Charge numbers for 1-4 above. A charge number is the combination of an employee number, supplier number, expense report number and a cost element, charged to a unique direct charge contract number, an overhead pool expense account or a G&A expense account.
7. Consider hiring a payroll service company to support salaries and regular paychecks plus tax and withholding for EVERYONE IN THE COMPANY.
8. A monthly closing where direct costs are burdened with indirect costs and billings are generated to customers creating accounts receivable for that which can be billed and liabilities for that which cannot.
9. Revenue accounting upon receipt of a payment from a customer directly to the contract against which a bill was generated with offsetting receivable reductions at the contract level.
10. The discipline and attention to set up 1-9 and demonstrate its operation to a DCAA auditor.

CONCLUSION

Every successful small business in federal government service contracting has gone through the above; some proactively and others when they have had difficulties with a DCAA audit during a proposal or cannot get paid when they are under contract. The choice is yours. It is not rocket science but it is different and it is a serious matter and must have your attention.

53. DCAA AUDITS AND SMALL BUSINESS JOB COST ACCOUNTING SYSTEMS

Introduction

Small Businesses typically have a learning experience growing into government contracting. Part of that process is undergoing reviews by the Defense Contract Audit Agency (DCAA). It takes knowledge of the requirements and strategic focus to set up the type of business processes required for accommodating government contract job cost accounting and fit those processes into the way your company does business.

DCAA or other agency representatives do not approve job cost accounting software packages. They approve contractor job cost accounting practices in compliance with Federal Cost Accounting Standards (CAS). If you are a small business, you are probably going to come under modified CAS Coverage that you can read about at the following link:

http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/farapndx1.htm#P98_14747

Perhaps you have already examined the above background, but I would encourage you to review it again in connection with planning for your business system. Perhaps you have discovered that CAS compliant job cost accounting effects your estimating structure, your long range planning for indirect rates, as well as your general ledger, overhead and G&A structure. You may have discovered as well that DCAA wants to see your government contracts accounted for in a separate cost center from your commercial work and that there are certain unallowable costs that cannot be charged directly or indirectly to government contracts.

Proposal Audits

Proposal audits are performed by DCAA on your cost proposal at the request of the Procurement Contracting Officer (PCO) and verify your direct and indirect rates against your long range plan, your labor category pricing, contingent hire agreements, vendor quotes, subcontractor proposals and all other data related to the cost volume of the proposal. Results go to the PCO. Arithmetic checks are made. No opinion is offered on the merit of the pricing, only that it has been documented in a long-range plan or a vendor or subcontractor quote and it is accurate.

Progress Billing Audits under Firm Fixed Price Contracts

This type of audit is on live data from your billing system. It is triggered by your submitting a progress payment under a firm, fixed price contract. Progress payments can be allowed in long-running firm, fixed price contracts that are front-end loaded with material and labor investment and have lengthy schedules for delivering the end product. The DCAA Auditor will get the audit request from the contracting activity and will ask to examine the complete set of job cost records in your accounting system for incurred

cost on the fixed price contract and tie those records out to the progress payment requested amount (usually 85-90% of the incurred cost to date - they hold some billed amount in retention). Records audited are at the time card and expense report level, as well as purchase orders, travel vouchers and any other transactions that are booked and billed in your accounting system to the fixed price contract. They will want to see the time cards and other documents and will trace them back through the system. If you do not have a progress billing clause in your firm, fixed price contract, it is unlikely you will be audited. The contracting activity or the Defense Finance Accounting System (DFAS) will simply compare the final amount you bill to the firm, fixed price amount in your contract and pay if the item or service has been accepted and delivered. (Usually a sign-off by the PCO, Contracting Officer's Technical Representative (COTR) or a DD Form 250 signed by a government inspector on product deliveries)

Cost Plus and T&M Contract Billing Audits

Billing audits are performed by DCAA, again at the request of the contracting activity. The auditor will go into all actual cost records submitted with your billing. Cost plus and T&M billings must have all the billing detail behind them or they will not be paid. The detail must be at the transaction level and the audit is identical to the one discussed above for progress payments.

Incurred Cost Audits (Often referred to as "Rate" audits)

These audits are conducted when you are closing out contracts with the government and they have been billed at provisional rates, or the government needs to establish that you are billing accurately from a rate standpoint. If the contract is fixed price with progress payments, cost plus or T&M in nature and has been billed over a long period, particularly if it has crossed more than one government fiscal year, then a system-wide incurred cost audit will be necessary to verify the rates that were charged to the government and determine the difference between the provisional rate billed and the actual rate incurred (where applicable).

In addition it is periodically necessary for the government to establish that no unallowable costs have found their way into government contract billings.

The government allows provisional billing rates for the convenience of the contractor based on his long-range plan and mix of business. The government holds a retention amount on each billing and then at closeout determines with the contractor through an incurred cost audit the final amount due on the contract, releases the retention accordingly, and the contract can then be closed if all other obligations have been completed. At closeout the government pays the final bill.

A rate audit determines the compliance of the job cost system if it occurs while the contract is in process. If an incurred cost audit occurs on contract closeout actions, results will directly impact final contract billing approval and amounts.

Job Cost Accounting Software

My experience with job cost accounting software tools is that complete packages are pretty expensive. COTS accounting packages such as Quick Books do not provide job cost accounting. I have installed JAMIS, which is the 'Cadillac', DELTEK, which is the 'Fairlane 500', and SYMPAQ, which is the 'Volkswagen'. They are all expensive, even for single user licenses. You can go to these and other product sites on the web and examine their capabilities:

<http://www.delttek.com/>

<http://www.aldebaron.com/sympaqSQL.html>

<http://www.jamis.com/>

Here are some products especially designed for small business:

ERP-GOV is a new product that appears to be economical and fairly high quality:

<http://www.tandesols.com/products-erp.asp>

ICAT is an add-on tool for Quick Books that some small companies are using:

<http://www.fcservicesnetwork.com/products.aspx>

PROCAS is an offline and online, on-demand approach that is relatively new and shows promise:

<http://www.procas.com/>

All of the above suppliers are used to long sales cycles and competing against each other. They will do remote demos for you and bend over backwards to show you their products. You can learn much about government contract job cost accounting just by taking the time to go through a demo. For companies whose direct job cost records are growing fast, these tools offer the utility to manage data volume and efficiently handle requirements such as changes to existing records driven by rate changes, fiscal period closing or contract closeout.

Growing Your Job Cost System

Many small companies doing government work start out with a rudimentary direct job cost accounting software package such as Peach Tree or the add-on tool for Quick Books mentioned above and crutch it with manually maintained records on spreadsheets for indirect cost allocation, time keeping, expense reporting, purchasing and supplier commitments. There is nothing wrong with such an approach as long as you can supply job cost (individual contract) records complying with modified CAS Coverage and demonstrate such things as:

Time Cards and time keeping process by worker and labor category by contract or indirect cost pool

Expense Reports and expense report process by worker by contract or indirect cost pool

Purchase Orders with job cost accounting data traceable thru invoices to contacts or indirect cost pools after payment

Overhead Allocations in a Government-unique cost center to individual contracts at month end based on individual contract direct labor cost

G&A Allocations in a Government-unique cost center to individual contracts at month end based on individual contract total cost

A semi-manual approach gets burdensome as the company grows and the number of accounting transactions at the direct and indirect cost level increase in volume.

If you do not have a good job cost software, I recommend you begin looking for one and plan strategically to implement it if progress billings and service contracting to include time and material and cost plus contracts are in your future. Implementing a government compliant job cost system is a sensitive matter and must be planned. I was never able to pull it off in a small company in any less than a year with some delicate timing, particularly during cut-over from the old system to the new.

As companies grow and get involved in larger programs they come under full CAS Coverage that requires a disclosure statement and considerably more controls on the structure of the business system. You can read about full CAS coverage at the link contained in the introduction to this article.

Summary

If you have the investment budget available, you may wish to consider the job cost accounting system software suppliers I mentioned above and compete them against each other for a price. Installing one of these packages is critical from an accounting period standpoint. I recommend a new year starting point and running in parallel on your old system for at least a quarter.

Keep in mind that DCAA does not approve COTS job cost accounting system software. Buying the software will not make you "DCAA Compliant" or "CAS Compliant" That objective is achieved through careful process development, specific to your company, utilizing software as a tool to operate your own unique business processes. Your processes will include long range planning, pricing, job cost accounting, indirect cost allocation, time-keeping, expense reporting, purchasing and commitments and billing - all geared to accurate job cost records at the individual contract level.

To the extent that you cannot demonstrate the above features to DCAA when they audit your business you CAN demonstrate that you are aware of the necessity to set these things up, lay out your plan to do so, and specify a time frame within which DCAA can expect to see you complete your compliant government contract pricing and accounting structure.

I have found that DCAA auditors are reasonable people who understand small companies must grow into government business systems. Showing them your accounting structure and your business system plans will display knowledge they will appreciate and assure them you understand the requirements, even if you cannot demonstrate all the processes at the point in time that the government initially audits your company.

Chapters 45 and 46 through 50 provide further detail and examples on establishing CAS-Compliant small business planning, pricing and job cost accounting.

54. WHAT TO EXPECT FROM PRE-AWARD SURVEYS AND FACT FINDING

INTRODUCTION

When a government contracting specific market target has been identified and a proposal has been submitted, pre-award surveys and fact finding by the buying agency or the prime contractor often follow. These processes take two forms:

1. A survey visit to the small company facility
2. Inquiries with respect to supplementary details for enhancing the customer perspective on a proposal submittal.

Undertaking the above processes with a government agency differs from that of undergoing them with a prime contractor. You are not required to disclose proprietary data to a prime contractor. Please see the following articles for further information in this vital area:

<http://www.smalltofeds.com/2008/09/protecting-intellectual-property-and.html>

This article will discuss each of the above processes and suggest measures to prepare for, conduct and succeed at pre-award surveys and finding.

PRE-AWARD SURVEY

A pre-award survey is a government or prime contractor visit to a supplier's facility. The Procurement Contracting Officer (PCO) or the Administrative Contracting Officer (ACO) and the Contracting Officer's Technical Representative (COTR) as well as members of their respective staffs may attend.

In some instances the local Defense Contract Management Area Office (DCMAO) is involved. As you become a regular supplier to an agency, site survey visits will normally cease or occur only rarely.

For further explanation of the above government officials and their roles, please see the following article:

<http://www.smalltofeds.com/2007/06/federal-government-contracting-customer.html>

The site survey team is interested in establishing the physical presence of a new supplier, the technical capability and the human resources to perform the prospective work and the quality of the environment in which the effort will be performed. A "Pre-award Survey of Prospective Contractor" Forms are completed and become part of the contract file:

<http://fast.faa.gov/ProcurementToolboxForms.cfm>

Pre-Award Survey of Prospective Contractor SF-1403 8/1997
Pre-Award Survey of Prospective Contractor (Accounting System) SF-1408 8/1997
Pre-Award Survey of Prospective Contractor (Financial Capability) SF-1407 8/1997
Pre-Award Survey of Prospective Contractor (Production) SF-1405 8/1997
Pre-Award Survey of Prospective Contractor (Quality Assurance) SF-1406 8/1997
Pre-Award Survey of Prospective Contractor (Technical) SF-1404 8/1997

Select the person who will lead the meeting with the government survey team. This person should be empowered to speak for the company and should be completely familiar with details of the solicitation and your company's offer.

If relevant, make available one or more technicians to answer questions. Identify any disparities that may exist between the solicitation and your company's offer that should be resolved during the initial meeting with the survey team. Think about how you can demonstrate actual technical capability or the development of technical capability on the proposed contract. Make sure your facilities and equipment are available and operable. If they are not, be prepared to demonstrate that they can be developed or acquired in time to meet proposed contract requirements.

Make sure that your labor resources have the proper skills or that personnel with the needed skills can be hired expeditiously. Gather and make available to the survey team documentation, such as previous government contracts or subcontracts or commercial orders, to demonstrate a past satisfactory performance record with regard to delivery, quality and finances. Gather financial documentation for the team financial analyst, including the company's current profit and loss summary, balance sheet, cash flow chart and other pertinent financial information. Make sure the plans are in place for vendor supplies and materials or subcontracts to assure that the final delivery schedule can be met. Make sure that these plans are verifiable.

Review any technical data and publications that may be required under the proposed contract and make sure you understand them. If the contract is a type other than a firm-fixed price or if you have requested progress payments, prepare adequate accounting documentation for review. Review your quality control program and make sure that it is workable and consistent with the quality requirements stated in the contract.

PROPOSAL FACT FINDING

Fact-finding usually involves the government requesting additional information to supplement that which was submitted by you in your proposal. These areas of interest are early indications of where the negotiator is looking for weaknesses in your cost justifications or disconnects between your technical approach and the cost you are estimating to do the job. If you have subcontractors or major material suppliers, the government may ask for copies of your vendor proposal evaluations. The government may wish to examine cost history for the last time you performed similar efforts.

Keep in mind that most government agencies put together an independent cost estimate of what they feel the item or service should cost. These are commonly called "Should Cost Estimates". The additional requests for information during fact finding are feeding the should cost estimate. The Procurement Contracting Officer (PCO) typically has an end user for the product or service internal to his organization who will become the Contracting Officer's Technical Representative (COTR) when the contract is awarded.

The COTR has a strong influence on the negotiations and will usually be present when negotiations commence. On many occasions, the COTR is the real internal customer at the agency. He has fiscal, technical and schedule responsibilities to his management for the program you are servicing. He simply cannot sign for the government.

The PCO has the agency warrant to commit the government and knows the most about public law and the Federal Acquisition Regulation (FAR) as it is applied to contracts the agency undertakes. It is the COTR who is likely feeding the PCO requests for fact-finding data. Keep in mind that the COTR and the PCO are formulating their assessment of the cost and the risk associated with the program during the fact-finding process. Cost is the first item of negotiation and risk has a direct influence on the government's position on profit.

The contacting officer may order a Defense Contract Audit Agency (DCAA) audit. The Request for Proposal (RFP) to which you responded may in fact have ordered a copy of your proposal be submitted to the DCAA Office nearest your location. If you are a new supplier to the government, DCAA may ask for a copy of your long-range plan containing your direct and indirect rate structure. They will verify the rates utilized in your proposal against your LRP, evaluate escalation factors utilized for long term projects and check the math. For guidance on these matters, please see the following article:

<http://www.smalltofeds.com/2008/02/dcaa-audits-and-small-business-job-cost.html>

The auditor will ask for copies of major material and travel quotations and insure that government per diem rates are utilized for lodging and meals in the cost proposal.

DCAA may also visit your facility to check compliance with Cost Accounting Standards insuring that the company sets up each new government contract on job cost accounting in the identical manner in which it was proposed; in effect identifying direct labor, direct material and other direct costs to each contract monthly and allocating overhead and G&A utilizing the same numerator and denominator relationships upon which the contract was originally estimated.

DCAA is paid by the PCO to perform the audit. The audit does not extend to negotiations and at the audit conclusion the auditor files a report with the PCO. The report will contain information on any errors uncovered and findings on the adequacy of the accounting and long range planning systems. DCAA will not express an opinion on the cost content of the proposal in terms of a value judgment regarding prices for prospective supplies and services.

If the auditor does not offer an exit interview, ask for one. Better yet, ask for a copy of the audit report to the PCO. Many DCAA offices will provide a copy to audited contractors. DCAA does not have the authority to direct a proposal revision based on audit findings. An astute contractor will immediately correct any errors found by the auditor in the proposal and examine other audit findings in preparation for negotiations.

SUMMARY

With adequate preparation and an understanding of what the processes involve, the small enterprise can succeed in passing government agency or prime contractor site surveys and fact finding.

Remember that these encounters are extensions of your image as presented in your proposal. They are building block in nature and serve to establish, reinforce or change a customer's view of your company and your proposal.

55. PROVISIONAL INDIRECT RATES IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

Recent articles at this site have overviewed FAR and CAS Compliant business systems for small enterprises undertaking federal government contracting:

<http://smalltofeds.blogspot.com/2008/03/establishing-far-and-cas-compliant.html>
<http://smalltofeds.blogspot.com/2008/02/dcaa-audits-and-small-business-job-cost.html>

Chapter 51 contains an explanation and examples of a forward pricing budget plan from which provisional rates are established and negotiated with the government. Under "Management Factors" the chapter goes on to explain that it is not always possible to execute the plan as anticipated.

Programs and projects will come and go, entering and leaving the business base sometimes earlier and sometimes later than planned. Expenses do not always materialize as anticipated. For these reasons actual experience in terms of indirect rates may differ (+or -) from provisional rates.

There are three important points to remember regarding provisional bidding and billing rates:

1. Provisional rates are utilized for both pricing and billing and billed rates must be reconciled to actual rates at contract closeout for cost-plus and time and material contracts.
2. Provisional rates are audited by DCAA and are the baseline frame of reference for auditors reviewing proposals and billings until the contractor asks for a change. Provisional rates are used for billing existing contracts and for pricing new work. Provisional rates are approved by DCAA for both purposes or they would not be "Provisional" by definition.
3. A change to provisional rates must be supported by data regarding actual running rate experience and may start a series of questions by DCAA or contracting activities regarding what sort of management corrective action is planned for differences between provisional and actual running rates (particularly if a provisional rate increase is proposed under time and material or cost type contracts or prices for outstanding proposals are increased due to rate changes prior to negotiation)

There are no industry average indirect rates in federal government contracting because there are wide swings due to many factors. Company indirect rates are managed based on the competition, the market and the funding availability of the customer. Site-unique indirect rates inside government facilities are always lower than company site operation rates because the government is paying a portion of the expenses on

work occurring inside a government facility.

Assuming a small business pays roughly the same on the open market for labor, material and ODC as the competition, and has to offer the same fringe benefits to retain employees, the remaining overhead and G&A rate expenses are principal drivers in winning new business and have the most potential to lose a job, cause funding difficulties on an existing program or be responsible for a loss on projects negotiated at fixed rates.

Below are examples of a risk analysis thought process when evaluating whether or not to make a provisional rate change:

EXAMPLE 1

One could say that it may be a poor time to change a provisional rate when there are several FFP proposals outstanding and in negotiation or a major competition is coming up.

On the other hand if there is a wide unfavorable variance between the current actual running rate experience and the existing provisional rate and the future forecasted base and expenses do not show improvement, perhaps the rate should change to avoid signing up to prospective losses or ambitious funding profiles that may mislead a customer.

EXAMPLE 2

One could say that it is a good time to change a provisional rate if several cost plus and T&M contracts are pending closeout and there is a wide disparity between billed cost and actual cost due to rates. In fact, if the government is going to owe you money at closeout, the issue should be broached as soon as possible to the contract funding authorities to insure there are enough funds on the programs to cover the final bills. Conversely, if you will owe the government money at closeout your forecasts should project the anticipated drop in final contract pricing that will be settled in the closeout actions with the government.

For most companies a provisional rate change comes about at the end of the calendar year and the beginning of the new calendar year. Accountable personnel perform a bottoms-up projection of the anticipated business base and associated expenses by cost center. The company then submits the results to DCAA to get them approved for the new year as revised provisional rates.

Nothing mandates a specific date for a provisional rate review. DCAA audits proposals and contract closeouts, fixed price progress billings and cost-plus and time and material billings. During those audits there may be questions regarding the comparison between bidding and billing and actual running rates.

The company takes the action for provisional rate changes by requesting them from the government as a function of an annual budgeting cycle or business developments. DCAA approves them.

Throughout, the data is very company private and closely held. No other company, to include prime contractors has the right to your rates and rate supporting data. When necessary they will see only fully loaded labor, material and ODC.

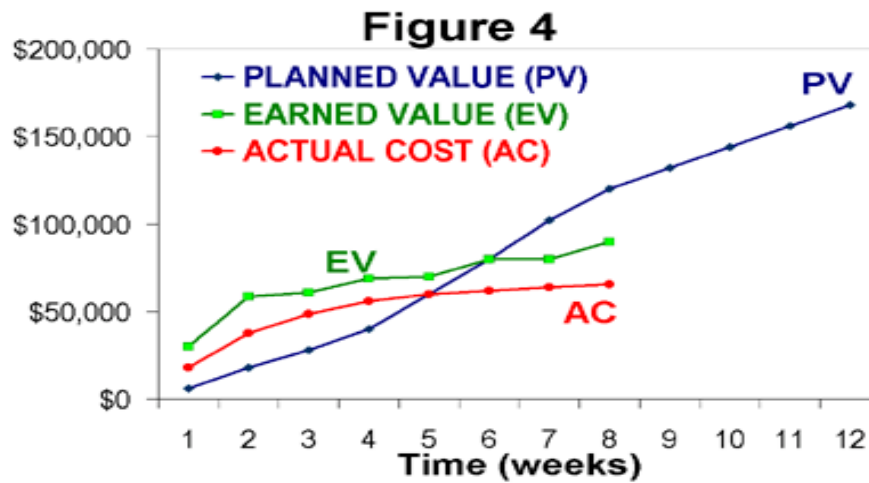
The term provisional implies subject to change and approved on an interim basis by DCAA. Provisional rate changes for billing and pricing can occur more often than annually if the business is changing on a volatile basis with work coming and going from the business base in an unplanned manner and expenses increasing or decreasing with economic changes.

I have seen some corporations that had several changes a year. It is a management call, but DCAA reserves the right to review and approve each one.

A provisional rate change is a delicate matter and should be approved by a management level of the company where authority to effect cost change resides (usually the CEO and CFO).

Management must make rate change decisions based on company-unique product and service lines, work location, forecasts, customer demands, competitive factors and contract status. It is a job that should be undertaken by executives who get paid for balancing such factors and for managing successful outcomes from decision results.

56. EARNED VALUE MANAGEMENT SYSTEMS



Recently a question regarding project management on "Linked -In" prompted me to recommend a simple application of an Earned Value Management System (EVMS) to deal with a project management problem.

The question and my answer are as follows:

Question:

How do you keep yourself on task and on budget during a start up?

What are some techniques that you use to keep you (and your team?) on task, and on budget, during a business start up?

Answer:

Plan to measure your "Bang for the Buck". Establish tangible tasks in the form of a plan. Set milestones for them in time at a budget value for each milestone tied out to the total budget. The milestones should be things you can look at and say, "That's done".

Status your plan regularly. When milestones are completed, credit the budget value as earned. Tasks may cost more than their budgets to complete. That is cost variance for completed tasks.

If milestones are not completed by their scheduled date do not credit their budget value as earned. Behind schedule tasks are thus contributing to a cumulative budgeted schedule variance in time.

If you are running an unfavorable schedule variance for incomplete tasks and an unfavorable cost variance for completed tasks you are in trouble.

Corrective action, additional resources or a work around plan will be necessary to recover from negative variances. You will investigate the tasks behind schedule and over cost to determine the problem, the cause, the resolution, the corrective action and the likelihood of overrunning your total budget or being late due to events at time now. You will have time to do something about it.

The above technique can be used for starting a company or running a project. This technique is commonly referred to as Earned Value Management. It should not be driven to a level of detail that is unmanageable.

Prudently used this approach gives insight into the dynamics of physical accomplishment driving status as opposed to plan versus actual cost tracking which tells you only that you are spending money.

There were many responses to the question at the "Linked-In" site. Various approaches were recommended for keeping a new start-up company on track with regard to becoming established within budget and time constraints. EVMS is the most effective project management technique to achieve that sort of objective.

Please visit the below Wikipedia article from which the graphic leading this post was downloaded for an excellent explanation of EVMS and its application on projects:

http://en.wikipedia.org/wiki/Earned_value_management

In short, the technique:

1. Ties budget to schedule
2. Establishes measurable means to track project status
3. Accounts not only for the money being spent but also for what is being accomplished with the expenditure.
4. Allows in-process cost and schedule corrective action in time to favorably influence the project outcome.

I have utilized the EVMS technique from the smallest of projects to large-scale systems programs. It is well worth learning and practicing. If you become involved in large enough government projects EVMS will be required under your contract by government and prime contractor customers.

Many companies recognize the benefits of EVMS project management and apply it without being required to do so by contract. It produces excellent results.

57. CONTRACT BASELINE MANAGEMENT IN SMALL BUSINESS FEDERAL GOVERNMENT CONTRACTING

INTRODUCTION

Government Computer News (GCN) recently carried a story on the difficulties experienced with, "Performance-Based Contracting", which has been made part of the Federal Acquisition Regulation (FAR) in an attempt to pre-establish at contract award those discrete outcomes that determine if and when a contractor will be paid.

Interestingly enough, the article splits the blame for the difficulties right down the middle, stating the government typically has problems defining what it wants as an end product or outcome and looks to contractors to define it for them. More than willing to do so, the contractors detail specific end products or outcomes, set schedule milestones and submit competitive proposals.

The winner is selected based on what the government thinks it needs at the time to fulfill its requirement and a contract is negotiated. Once underway, the government decides it wants something else (usually a management-by-government committee phenomena with a contractor growing his product or service by offering lots of options).

The resulting change of contract scope invalidates the original price and schedule, so a whole new round of proposals and negotiations must occur with the winner while the losers watch something totally different evolve than that for which they competed. The clock keeps ticking and the winner keeps getting his monthly bill paid based on incurred cost or progress payments. The link to the GCN article is below:

http://www.gcn.com/online/vol1_no1/42691-1.html

The present state of the economy will not allow the aforementioned to continue. Government agencies are now hard pressed to insure the most "Bang for the Buck". It is in the long term interests of astute contractors to assist in that endeavor. The only way to achieve such an objective is through sound technical, cost and schedule contract definition via an iterative process of baseline management and control. This article will address that process.

SOLICITATION AND STATEMENT OF WORK BASELINE

If you are selling a straight commercial product off the shelf, the problem of baseline management is minimal, assuming your product meets the specifications required and you deliver on time. Is it during development programs for new products or service contracts involving labor supplied to the government that lack of definition and poor communication are high risks. The initial benchmark for managing this risk is in the government solicitation and statement of work.

A wise customer farms the preliminary draft solicitation and statement of work out to prospective bidders and requests comment. A wise supplier is constructive, yet critical in pointing out weaknesses in the document.

Part 1, Section C, is where the technical specifications and statement of work are located in the solicitation and will reside in your negotiated contract. Without a well written Statement of Work (SOW) and associated supplies and services specifications there is unacceptable risk in the future contract and is it exceptionally high risk to bid or contract the job. Both the contractor and the government must come to an understanding regarding the scope of effort to be performed. That understanding is conveyed in the SOW and confirmed in the specifications referenced therein. A good SOW should have the following principal attributes:

- Clear identification of the products, services, skills, materials and performance factors required to complete the contract
- A description of the conditions under which the contractor will be required to perform and any related environmental or location factors
- Specific references to product specifications that govern an acceptable product or services performance outcome and delivery acceptance
- A schedule for the contract that identifies discrete delivery dates for products and specific start and end dates for supporting labor.
- A precise description of government furnished material or facilities required and when it will be made available to the contractor.

If your customer does not provide the above, offer a revision to the document during the comments period, during your proposal or during negotiations that represents a version to which your company will commit. Do not let the fact the program is competitive sway you from the facts. Signing off on a poorly written SOW results in a difficult contract to manage, a high probability for disputes during the contracting period and a poor past performance record you will have to deal with in the future on other jobs. You should also do a complete review of the Contract Line Item (CLIN) Structure in the solicitation and cross foot SOW requirements to insure the scope is covered by the CLIN'S.

Please see the following article on how to perform this analysis:

<http://www.smalltofeds.com/2009/03/contract-line-items-heart-of-your.html>

NEGOTIATION BASELINE

The following article discusses the standard template for negotiations through which government contracts generally pass:

<http://www.smalltofeds.com/2007/03/small-business-federal-government.html>

During the audit, fact-finding and subsequent negotiation steps, a growing definition of the contract occurs and a clear understanding between you and your customer evolves. If you find the process slow and unknowns frequently surfacing, that is a barometer of future difficulty unless the issues are resolved. Technical work scope, schedule, cost and terms and conditions regarding inspection and acceptance as well as payment provisions are especially sensitive.

CONTRACT AWARD BASELINE

Signing the contract represents full agreement on the proposal and conclusion of negotiations. Award is the benchmark baseline for contract performance.

BASELINE MAINTENANCE - THE CHANGES CLAUSE

During the period of performance on a development or services contract, effort does not always go as planned. The article on Earned Value Performance Measurement (EVMS) at this site is one technique to control this situation:

<http://www.smalltofeds.com/2008/05/earned-value-management-systems.html>

Not all programs warrant EVMS or have the funding to perform that type of control. The simple rule of thumb is that the changes clause in your contract allows you to request additional funding and schedule relief, as well as a modification to the SOW if you are being driven by customer directed work scope change events to depart from the baseline to which you committed at contract award.

To the extent you do not remain sensitive to this provision, on a firm fixed price contract you will lose money. On a cost plus and time and materials type contract you will consume funding at a higher rate and faster than the contract baseline anticipated and your customer may or may not be able to provide additional monies when the ceiling amount on the contract is reached. At that point in time it is too late and everyone is disappointed.

The above occurrences are collectively known as "Scope Creep" in project management circles.

THE DIFFERENCE BETWEEN BUDGET AND FUNDING - (Limitation of Funds and Funding Exposure)

Many federal contracts are funded incrementally, usually based on the government fiscal year that runs from 1 October to 30 September. Although the government may negotiate dollar price ceilings for cost plus and time and materials contracts or firm, fixed total price arrangements, the contracts themselves may be incrementally funded, particularly if they extend over two government fiscal years.

A contract may contain negotiated prices or a cost ceiling but also specify an incremental funding value. The contractor is required to inform the government when actual costs incurred plus obligations to suppliers or payroll on a specific contract reach certain thresholds of the current incremental funding specified in the contract (usually 80%). The government is then obligated to further fund the contract. In the event the contract is not funded further, the contractor has the right to stop work before he exceeds the incremental funding.

Some contractors choose to operate on "risk," continuing to perform on a contract while exceeding the incremental funding in booked cost and obligations. The government is under no obligation to reimburse the contractor for amounts exceeding incremental funding.

Nearing the end of a government fiscal year, a contractor may find delays in funding reaching all the way to congress. This situation must be managed with the government contracting officer.

If a contract is not funded to continue and the contractor has performed to date in accordance with all required terms, the government retains the right to terminate the contract for the convenience of the government. This requires a special notification to the contractor from the government and usually occurs due to changes in government priorities. The contractor may then bill the government for all costs and obligations to date, plus any direct and indirect extraordinary costs associated with business disruption, termination administration, employee layoff cost and the like. Terminations for convenience are very expensive for the government. Nevertheless, limitation of funds and funding exposure must be carefully monitored by an astute small business. To properly manage incremental funding, the business system must be capable of accounting monthly for all direct and indirect costs on each contract, plus commitments to suppliers and employees in the form of open purchase orders and unpaid or un-posted payroll.

Your internal release document should specify the current incremental funding if your contract is not fully funded at award. Further revisions to your release documentation should convey receipt of contract amendments from the government that supply additional required funding to the contract as performance proceeds. Requests for increases in incremental funding are required when the actual booked cost plus commitments to suppliers reaches 80% of the current funding on the contract.

In the event the contract is not adequately funded incrementally by the government, a revision to your internal release documentation should specify a stop work order after you have notified your customer that you plan to cease performance on the contract due to lack of sufficient funding. Notification should be provided to suppliers under your contract with a stop work to avoid their incurring additional costs for which you are not receiving funding from the government. Be specific with a stop work date to these suppliers.

IN SUMMARY - KNOW WHERE YOUR ARE AND WHEN TO SAY "NO"

"Scope Creep" can kill a contract, a customer relationship and a past performance record, all of which are important to your business. Stay in front of "The Scope Creep" by communicating positively with your customer to control your baseline, keeping cost, schedule and technical performance integrated and synchronous.

Six rules of Thumb to control "Scope Creep":

1. KNOW - The contract value and its ceiling amount
2. KNOW - The incurred cost to date and commitments
3. KNOW - The scope of work and whether or not your current efforts are supporting it or some other objectives
4. KNOW - The estimated cost at completion based on where you are at today
5. KNOW - Your customer and who among the customer population is prone to direct out of scope effort.
6. KNOW - WHEN TO SAY "NO" to "Scope Creep" and say it officially in writing to the contracting officer specified in your contract.

58. TOTAL TIME ACCOUNTING

It is necessary to establish a written policy and procedure disclosing time keeping practices to DCAA and to fact-finding teams on proposals as the company process for both pricing and accounting for overtime as a whole. In doing so, topics such as compensated and uncompensated time must be addressed.

Include in the policy/process for pricing and job cost accounting those steps required for compensated overtime to personnel who are non-exempt from the Fair Labor Standards Act (hourly who receive time and one half).

Also include the policy/ process for pricing and job cost accounting, those steps required for uncompensated overtime to personnel who are exempt from the Fair Labor Standards Act (salaried who receive pay at straight time for hours in excess of 40 and those who do not receive pay at all for hours in excess of 40) The former are usually engineers and technicians. The latter are usually management or staff).

I encourage "Total Time Accounting" to my clients to make all hours worked a part of the record and stay away from waste fraud and abuse or defective pricing allegations. I believe the below article by Find Law contains the best approach to the issue of uncompensated overtime and I encourage my clients to make part of their policy the practice specified in the last 4 paragraphs of the article:

<http://library.findlaw.com/1999/Jul/1/127569.html>

"In our view, contractors performing labor-hour, time-and-material, or cost reimbursable contracts should avoid any timekeeping system that fails to accurately report the total time worked. Such a system under-bills clients for work performed and thereby affects a company's bottom line. Moreover, any timekeeping system that by its very design under-reports actual hours worked invites labor mis-charging and false claim allegations.

A total time accounting system that accurately reports hours will generate the proper amount of revenue for contractors on each of their labor-hour and time-and-material contracts. Cost reimbursable contracts have an added twist. Many cost reimbursable contractors who report total time use a diluted hourly rate approach for distributing labor costs to projects. For example, if an employee is paid \$1,000 per week and works 40 hours, the projects are charged \$25 per hour. If the same employee works 50 hours the following week, the hourly rate is diluted and projects are charged \$20 per hour. In this example the contractor gets no additional revenue for the extra 10 hours of effort — they are provided free of charge to the Government.

Fortunately, acceptable standard cost approaches will negate this windfall to the Government and still allow the contractor to take advantage of uncompensated overtime. The most common of these approaches involves charging direct labor to projects at a standard hourly rate established annually for each direct labor employee. Actual hours are charged to projects at this standard rate.

For uncompensated overtime situations, the variance between labor charged to projects and actual compensation is credited to overhead. Such an approach allows contractors to account for their hours in an accurate, straightforward manner, bill for the hours actually worked, and effect a competitively beneficial decrease in their overhead rates. DCAA has recognized this as an acceptable method of accounting for labor costs, and we think that it generally beats just giving the Government hours of effort for free."