

GOVERNMENT CONTRACTING – A PATH FORWARD FOR THE NOVICE CONTRACTOR

Many companies, large and small, are interested in developing a portfolio of government contracts. At the same time, these entities by and large are relatively inexperienced in contracting directly with the federal government and its various agencies and their many contracting offices. Oftentimes the company's interest is spawned by the work it has done as a subcontractor for another entity who holds a prime contract with the government. In that regard, the experience working as a subcontractor in support of federal programs will be helpful in understanding the requirements commonly associated with federal prime contracts.

This primer is intended assist the unseasoned contractor in developing a plan outlining its path forward for entry into the government marketplace as a prime contractor. The path forward, not surprisingly, will vary from one contractor to the next. As such this primer should not be viewed as a "one-size-fits-all" approach toward courting the federal buyer.

STEP ONE—REGISTRATION ON CCR, CAGE CODE, DUNS NUMBER

Subject to certain narrowly crafted exceptions, companies that are interested in federal contracts must register on the Central Contractor Registry (CCR). The prospective offeror may submit a proposal to the government even before registering on CCR, but an offeror must be registered before it can properly be awarded a contract by the government. FAR 4.1103 (A) (1). Offerors may include as much information as they choose in their CCR registration; however, they must include certain basic information. Required information includes company name, address and contact information, "Commercial and Government Entity" code, "Data Universal

Numbering System" (DUNS) code, and Taxpayer Identification Number, among other things. The offeror will contact the Defense Logistics Information Service (DLIS) to apply for and receive the CAGE code. DFARS 204.7202. The DUNS number is a nine digit code assigned by Dun & Bradstreet. FAR52.204-6(a).

To register with CCR, visit CCR Registration at <http://www.ccr.gov>.

The CAGE Code is usually assigned by DLIS automatically after registration on CCR – if the registrant does not have a CAGE code at the time of registration on CCR. The registrant must contact DLIS to ensure that the CAGE code has been assigned.

To complete DUNS Registration, visit <http://fedgov.dnb.com/webform>.

STEP TWO —FEDBIZOPS—ADVERTISING FEDERAL REQUIREMENTS

The government announces daily its requirements for goods and services. To do so, it currently publicizes its requirements using an electronic clearinghouse commonly referred to FedBizOps. Offerors can conduct unlimited searches to identify opportunities in which it is interested. The best way to familiarize oneself with this system is to simply access FedBizOps by visiting its webpage at <https://www.fbo.gov>. This is the domain of the offeror's marketing and project management personnel.

STEP THREE—THE FAR AND AGENCY SUPPLEMENTS

Federal government contracting is heavily regulated. The procurement statutes, agency regulations, and intra-agency policies and procedures collectively comprise the "procurement process." The baseline procurement regulations are found at 48 CFR Chapter 1, and these are referred to as the Federal Acquisition Regulation (FAR). There are additional regulations issued by various agencies which supplement the FAR and these regulations are found at 48 CFR Chapters 2 – 99. Federal procurement regulations govern agency planning and preparation for conducting an "acquisition," the issuance of the solicitation, the receipt and evaluation of offerors (quotes and bids too), the selection of awardee, the award of the contract, the performance administration and completion of the contract, and resolution of disputes arising under or relating to the contract. At some point, most companies performing will opt to hire contract management and administrative staff to oversee the procurement process as relates to their contract portfolio. Until such time as the company can afford to hire employees to fulfill those services, it may retain a contract administration consultant to provide those services on a part-time basis.

STEP FOUR—UNDERSTANDING BIDS, QUOTES AND PROPOSALS

There are important differences between bids, quotes and proposals. The bid is an offer submitted on a fixed-price basis in response to a request for bids. Fixed-price contracts are usually used in those situations where the government intends to award a contract to the lowest-cost technically acceptable offeror. In other words, the lowest price will be selected for award so long as that the offeror meets the technical requirements. Bids are not subject to negotiation. Quotes merely inform the government of an offeror's willingness to sell certain goods or services of a particular price. The government may or may not elect to accept a quote by placing a contract or order. The proposal is normally submitted in response to a specific kind of solicitation, which are called a "request for proposal" (commonly referred to as an "RFP").

Proposals, unlike bids and quotes, are usually subject to negotiation and the government will make award to the offeror whose proposal represents the best value to the government, including consideration of cost and technical and other factors.

STEP FIVE—THE ART OF PROPOSAL DRAFTING

Proposal drafting is central to the procurement process. Poorly drafted proposals rarely give rise to contract award. In contrast, well-written proposals greatly increase the probability of being selected for contract award. The inexperienced contractor is well advised to retain outside expertise to assist with drafting and editing its proposals before finalizing and submitting them to the government. Over time, the need for outside services will diminish and the company marketing department will become self-sufficient in reviewing solicitations and preparing well-crafted proposals in response.

STEP SIX—THE FEDERAL SUPPLY SCHEDULE

For service contractors it may be desirable to apply for a schedule contract, also known as a Federal Supply Schedule (FSS) or multiple award schedule (MAS) contract. The most noteworthy FSS contract is the General Services Administration (GSA) schedule contract. In actuality, there are multiple GSA schedules, each one catering to a different category of government requirements. The contractor should visit www.gsa.gov and navigate through the portal to locate the GSA's master list of schedule solicitations, from which it can select the one or several solicitations that most closely capture its corporate capabilities. The GSA portal is highly informative and provides numerous tutorials and guidance for preparation and submission of a proposal.

The MAS contract is not a true contract. GSA is not obligated to place orders and the contractor is not obligated to deliver goods or services under its MAS contract.

The contractor uses the MAS contract as a calling card to direct market its capabilities to those agencies whose needs most closely align with the contractor's.

The MAS process typically takes anywhere from three to six months after submission to complete the required reviews and issue the FSS contract. The contractor should work with a consultant to assist with preparation and review of the MAS application before it is submitted to GSA. Mistakes and omissions can give rise to significant and costly delays.

STEP SEVEN—REVIEW EXISTING POLICIES AND STANDARD OPERATING PROCEDURES (SOPs)

As a prime contractor, the company will be subject to a multitude of new compliance requirements. For those companies that have previously operated as subcontractors in support of another entity's prime contract, they may have existing policies and procedures that fulfill in part some of the compliance requirements imposed on prime contractors. Fortunately, entry-level contractors may be able to submit proposals and other offers even before they have developed the necessary policies and procedures to ensure compliance with federal requirements. Many compliance requirements allow contractors a grace period following contract award in which to bring their SOP's into compliance with federal regulations.

Even with the benefit of the grace period, it can be a cumbersome task to analyze all existing policies and procedures and to develop new SOPs focused specifically on those federal requirements which are not encompassed within the company's established policies and procedures. As such, it is advisable for an offeror to undertake an initial review of the existing SOP's which will require augmentation to fully comply with federal laws even before the company submits its first offer to the government.

STEP EIGHT—KNOW WHAT YOU KNOW AND KNOW WHAT YOU DON'T KNOW

When considering a solicitation (or synopsis of requirements) it is important to determine whether the company can fulfill all of the technical requirements, substantially all of the requirements, a reasonable amount of the requirements, or only a few of many requirements. In those instances where the prospective offeror would perform less than all of the agency's requirements, that offeror will

need to consider teaming up with one or more subcontractors. The CCR is a reliable source to search for companies that can deliver those services which the prime contractor cannot. Teaming arrangements are common in government contracting. The larger the contract value, the greater the likelihood of subcontractor involvement. It would be beneficial for prospective contractors to develop a standard form for teaming agreements which would include provisions covering confidentiality, exclusivity, allocation of contract work and proposal efforts, among other things.

STEP NINE—CONTRACT MANAGEMENT AND ADMINISTRATION

Most successful contractors, be they big or small companies, have on staff a contract manager and/or administrator. The full function of the contract manager is to oversee all aspects of the government contracting process from proposal preparation through contract award, performance, administration, closeout, and dispute resolution. This individual plays a central (but not an exclusive) role in the process of ensuring compliance with contract requirements. Initially, this role can be fulfilled by a consultant or part-time employee. Over time, and as the portfolio grows, it may be necessary to hire one or more full-time employees to perform this function.

STEP TEN—INTERNAL CONTROLS

Prudent contractors should assess and strengthen its internal controls and use them proactively to detect contracting irregularities and correct conditions giving rise to same.

FOR MORE INFORMATION

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