
Government Subcontracting



Seminar Objectives

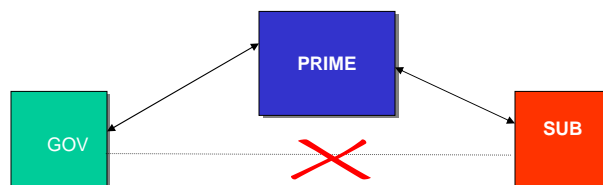
- Privity
- Prime or Sub?
- Marketing to the Primes
- Subcontract Management and Controls
- Subcontractor Responsibilities
- When the Contract is Over
- Common Errors
- If Things Go Wrong
- Subcontract Issues – Be Aware!

Characteristics of Subcontracts

- “Privity” is between the Prime and Subcontractor
- Prime applies mark up for managing the sub
- Subcontractor may be “invisible” to the government

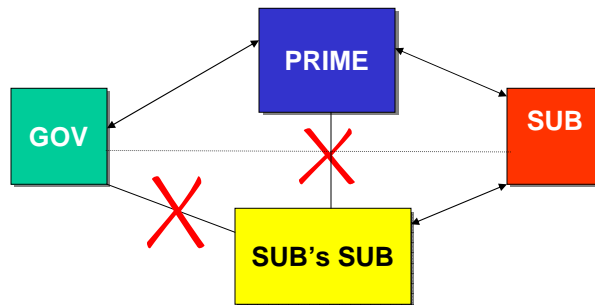
Privity – Principle of Contract Law

A direct contractual relationship between parties to a contract



Privity – Principle of Contract Law (Cont.)

A direct contractual relationship between parties to a contract



Prime or Sub?

- Advantages of being a subcontractor
 - Prime manages interface with the government
 - Prime has total responsibility
 - Some government work is available to small business only through prime contractors
 - Subcontracting builds a record of past performance
 - Subcontracting provides experience

Marketing to Primes

- Do your homework!
 - What does the prime do?
 - What products or services do they need?
 - How can you specifically support those needs?
 - Do they have subcontractors in place that you could sub to? (“second-tier” subcontractor)
- Market to your capabilities and be focused
- *Then* discuss your small business status and any certifications you may have

Understanding Subcontracting Plans

- Required for Large Businesses when
 - Negotiated or Sealed Bidding acquisitions are expected to exceed \$500,000 for goods/services, or \$1,000,000 for construction
- Separate goals for each small business type
- Failure to make a good faith effort may result in a determination of “breach of contract”
- FAR 19.702(a)(1) and (a)(2)
- FAR 19.704 has complete subcontracting plan requirements

Subcontracting Plan Content

- Estimated amount of all contracting
 - Subcontracting to large businesses (\$ and %)
 - Subcontracting to small businesses by category (\$ and %)
- List of products and/or services to be subcontracted and the type of business used
- Description of outreach efforts
- Primes should verify your size status

Subcontract Management and Controls

Pricing Concerns

Selection of type of contract

Fixed
Price

Cost
Reimbursement



Lower risk to Prime
Higher risk to Subcontractor

Higher risk to Prime
Lower risk to Subcontractor

Subcontract Management and Controls (Cont.)

- Pricing Concerns
 - Competition
 - Locating sources and ensuring availability
 - Requests for exclusive agreements
 - Submitting timely proposals
 - Evaluation criteria, e.g. price and cost, past performance, understanding of the work, responsibility

Subcontract Management and Controls (Cont.)

- Manage administrative matters
 - Know your contract
 - Create lower-tier subcontracts consistently
 - Know contract clause “flow-down” requirements
 - Be proactive
 - Document everything!

Subcontract Management and Controls (Cont.)

- Manage your project
 - Know your contract with the prime
 - Create contract plans and schedules
 - Coordinate work of multiple subcontractors and establish points of contact
 - Discuss key issues with both your prime and your subs, e.g. quality, safety, schedule, documentation procedures

Subcontractor Responsibilities

- You are responsible for
 - Your employees
 - Your subcontractor(s)
 - All required supplies
 - Cost, schedule, and performance for your segments of the work
 - Legal and financial aspects of your contract
 - Maintaining records
 - Meeting administrative deadlines

Subcontractor Responsibilities (Cont)

- Know your subcontracts
 - Verify proper “flow-down” clauses
 - Establish consistent procedures for
 - Submittals
 - Certified payroll records
 - Obtaining permits
 - Distribution of documents
 - Processing change orders, Stop Work orders, others
 - Proof of insurance, bonds, licenses, OSHA training
 - Anything else that is needed!
 - Remember that your sub is responsible for its subcontractor(s)!

Subcontractor Responsibilities (Cont)

- Be proactive and communicate
 - Plan your activities
 - Coordinate schedules and other requirements
 - Ensure subs understand who is authorized to direct them
 - Process payments in a timely manner

Subcontractor Responsibilities (Cont)

Document EVERYTHING



Subcontract Success

- Perform and deliver
 - Use your schedule as a planning and control tool
 - Do not forget about your subcontractors' deliverables
 - Track ALL costs as you go
 - If your contract has a funds/cost limitation or ceiling provision, communicate to the prime as indicated in the contract
 - Remember that satisfactory past performance improves opportunities for future business

Contract Closeout

- Perform delivery and acceptance according to your contract
- Submit all invoices promptly with attention to detail
 - Provide any required supporting documentation
 - Include your sub's invoices
- If prime has kept "retention" fees, sign off on necessary documents to release future claims and allow release of retained funds

Contract Closeout (Cont.)

- Assist prime with any requested documentation to facilitate contract close-out and final payment by the government
- Pay invoice(s) promptly
 - Take advantage of discounts
- Document payments in your contract file

When the Contract is Over

- Ensure documents are dated, signed, and legible
 - No post-its
- File all contract documents together
 - Remember record retention requirements
- Create a “lessons learned” document with your team
 - What went well?
 - What went wrong?
 - What can be improved?
 - Use for future contracts, marketing, and opportunities
 - Include prime’s point of contact information

Common Errors Made by Subs

- Following verbal directions given by those without privity (authority)
- Ignoring contractual time limits or requested time limits
- Blaming other subs, suppliers, and prime contractor
- Failure to manage lower tier subs
 - Subcontractor’s subs
- Inadequate documentation

If Things Go Wrong...

- Attempt to resolve issues at the lowest contracting level possible
- Non-payment
 - “You’ll get paid when we get paid...” clauses are not legal (but they’re done all the time!)
- Prime’s payment bonds
 - Especially on construction projects
 - Ensure payment for work done >\$100,000 (Miller Act)
- Does your company retain an attorney for business advice?

Subcontract Issues – Be Aware!

- Your prime contractor’s requirements usually “flow down” to you
 - Clauses
 - Certified payroll
 - Quality control and other inspections
 - Certifications
 - Work plans (including subcontract management plans)
- Your prime contractor will need you to comply well in advance of their contractual deadline, in order to incorporate your information in their reports

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Thank You for Attending!

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