



UIDA Business Services

A Non-Profit Arm of the National Center for American Indian Enterprise Development



**American Indian Procurement Technical Assistance Center
(AIPTAC)**



Selling To Primes: Agenda

- ❖ Types of Multi-Party Teams
- ❖ What is a subcontract?
- ❖ What does it mean to the customer?
- ❖ What does it mean to the prime contractor?
- ❖ What does it mean to the subcontractor(s)?
- ❖ How do they all function together to do the job?
- ❖ What is a “teaming agreement”?
- ❖ What about “mentor-protégé” programs?
- ❖ What about other multi-party arrangements?



Terminology

- ❖ Let's call the Government “customer”
- ❖ Let's call the prime contractor “contractor”
- ❖ Let's call the prime's suppliers and subcontractors “subs”
- ❖ Let's call the subs' suppliers and subcontractors “lower tiers”
- ❖ Let's use these terms for both products and services for all parties
- ❖ An important legal term: Privity means direct legal relationship, which will be explained later.



Types of Multi-Party Teams

These will be explained next.

- ❖ Typical Subcontract, including purchase orders
- ❖ Teaming Agreements
- ❖ Mentor-Protégé Programs
- ❖ Joint Ventures
- ❖ Association agreements
- ❖ Merger or acquisition



What Is a Subcontract?

- ❖ Sub means “under” in Latin
- ❖ Subdividing a scope of work into elements
- ❖ Contractor’s “make or buy decision”
- ❖ Difference between subcontract and inventory replenishment or overhead buys
- ❖ Relationships among the parties: customer, prime, and subs
- ❖ Illustrations



What it means to Customer

- ❖ Customer contracts with prime contractor for the whole pie
- ❖ Contractor might have a team of subs to share the pie with
- ❖ Some pieces of the pie that customer gets from contractor were actually made by 3rd parties that customer has no contract with
- ❖ Customer relies on contractor to get it all put together right



What It Means to Contractor

- ❖ Big responsibility, assumes risk for subs
- ❖ Might have to finance the whole job
- ❖ Must manage performance schedule & quality for entire team
- ❖ Responsible for “flow-down clauses”
- ❖ Relies on 3rd parties to satisfy customer



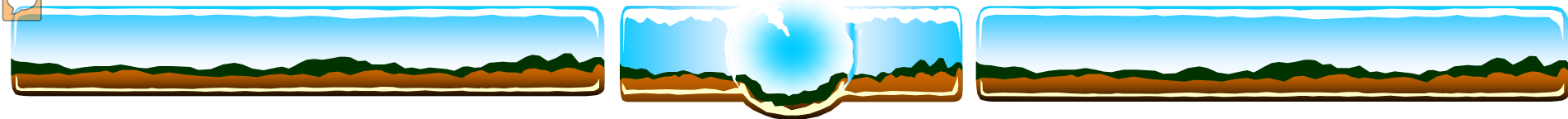
What it Means to Subs

- ❖ Delivering items to a customer that is not the end-user
- ❖ Customer satisfaction depends on the customer's customer being satisfied
- ❖ Payment often is delayed until contractor is paid (beware of “pwp” clause)
- ❖ Sub's piece of the pie might interlock with another sub's piece, based on yet somebody else's specs.



Putting It All Together

- ❖ Prime contractor manages the project
- ❖ Companies often overlook this management responsibility
- ❖ Need a good project plan; the more subs, the more detailed the plan
- ❖ Customer is kept informed throughout



Privity Issues

- ❖ Customer rep has no authority to give directions to sub, must go through prime, and must be in writing.
- ❖ Sub must not accept directions from customer/owner, must go through prime in writing.
- ❖ Sub may accept work from customer/owner as a separate contract unrelated to the subcontracting agreement with prime, but as a courtesy should notify prime of it.
- ❖ Disputes, disagreements, misunderstandings, between sub and prime cannot be resolved by customer/owner.
- ❖ Failure of the sub does not excuse the prime.



Flow-Down Clauses

- ❖ Terms & conditions in the prime contract that the government requires the contractor to impose on its suppliers & subcontractors.
- ❖ Often done improperly so sub must pay close attention & negotiate with prime to correct it.
- ❖ Watch for time periods, role of government, risk management, disputes resolution, etc.
- ❖ Never accept “pay when paid” from prime.



Customer Consent

- ❖ Review 52-244 clauses
- ❖ Prime contractor submits proposed sub-contract to customer before commitment
- ❖ Task Orders must specify which subs will be used each time.
- ❖ Limits on scope done by prime and subs
- ❖ Customer-directed sources and setasides



Socio-Economic Programs

- ❖ PL 95-507 amended Small Business Act
- ❖ Requires large primes to have Subcontracting Plan
- ❖ Requires smalls to “utilize” small subs
- ❖ Provides for SBLO in larges to help subs
- ❖ Setasides might apply to subs, read the solicitation



Other Socio-Economic Programs

- ❖ Preferences in subcontracting opportunities
 - ❖ Veteran-owned businesses, especially Service-Disabled Veterans
 - ❖ SBA's 8(a) Business Development Program
 - ❖ HUBzone small business
 - ❖ Woman-Owned Small Business
 - ❖ 5% Indian Incentive
- ❖ NIB-NISH setasides, now called AbilityOne
- ❖ Import restrictions (formerly "Buy American")
- ❖ Sub's share of setaside contracts



Other Multi-Party Teams

- ❖ Teaming Agreements (always in writing before bidding)
- ❖ Joint Venture forms a new entity
 - ❖ No effect on size status if it is for one project
 - ❖ Ongoing JV may be considered “affiliate” by SBA
- ❖ Association agreements have 2 or more names as contractor – share the role
- ❖ Merger or acquisition may need novation
- ❖ Other variations



Teaming Agreements

- ❖ This is a special type of subcontract, for special relationships
- ❖ When a prime and a sub “get engaged” by proposing a package deal to the customer, they need a “pre-nuptial” agreement
- ❖ The teaming agreement sets out what the subcontract would look like if the prime contract is awarded substantially as proposed, as well as the conditions of the pre-award relationship.
- ❖ When customer awards the prime contract to the contractor, the subcontract “marriage” is consummated per the teaming agreement
- ❖ May be for only one project, or ongoing
- ❖ Should be described in the proposal submitted by the prime.
- ❖ Approval by the customer of the prime’s proposal does not constitute consent to the resulting subcontract, so make sure the prime submits it again.



Mentor-Protégé Programs

- ❖ This is a special type of teaming agreement
- ❖ A large federal contractor is prime contractor and mentor
- ❖ A small (usually Disadvantaged) subcontractor is protégé
- ❖ An agreement for 8 years, based on guidelines in the agency supplement governing the prime contract, such as DFARS Appendix I
- ❖ Mentor gets credit in the Subcontracting Plan & might qualify for cost reimbursement
- ❖ Protégé receives assistance and other benefits
- ❖ Prime can award subs to protégé without consent
- ❖ Note that this discussion is different from the unique SBA mentor-protégé program for 8(a) companies.



Finding Bid Opportunities

- ❖ Primes are not generally required to publicize their activities as public agencies do, so these opportunities are not very visible.
- ❖ Even when they run the required ad seeking M/WBE subs, they are fickle about actually using the firms that respond.
- ❖ Use a personal marketing approach to establish and develop a business relationship with potential customers among primes.
- ❖ Register in their vendor database, with as much information as you can, and get your literature into their hands.
- ❖ Attend matchmaking events and opportunity fairs like this one, and always attend pre-bid conferences.
- ❖ Keep your CCR/DSBS profile up to date, some primes use that



Benefits of Subcontracting

- ❖ Excellent entrée to new marketplace
- ❖ Enhance company's attractiveness to customers with additional capabilities
- ❖ Access to assets without investment
- ❖ Spread the risk
- ❖ Increase innovation



Locations

❖ **Marietta, GA:**

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❖ **Window Rock, AZ:**

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