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 consumated 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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- **Ocean Springs, MS:**
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- **Herndon, VA:**
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- **Window Rock, AZ:**
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