Federal Procurement:

The Basics of Entering Federal Contracting in the United States



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roviding services to the federal government is no ordinary business. While the industry can be both rewarding and profitable, it does carry additional compliance requirements which should all be considered as part of the procurement process. Throughout this chapter, we'll explore topics that should be top of mind for organizations that are looking to enter the federal space.

Basics of Entering United States Federal Contracting

Overview of Federal Contracting

The decision to begin conducting business in the federal space is one that involves careful planning and consideration. Both the procurement process and operation of contracts and grants bring with them a set of compliance requirements necessary to both bid on, and to execute the work, within the federal space. Prospective contractors will have to register their business in order to become available to win federal work and will be required to maintain compliance requirements through a company's lifecycle of providing goods and services to the federal government. This differs from the commercial space where there is typically more flexibility in the negotiation of contracts, pursuit of work, and decisions regarding internal accounting, operations, and other business systems.

Before wading into the waters of working with the federal government, prospective contractors should be aware of the key decision makers and their role in both the procurement process and ongoing monitoring of contract and grant performance. Below are several key roles with which contractors should become familiar, along with their oftenused abbreviations:

- **Contracting Officer (CO)**: This person has the authority to bind the U.S. federal government to a contract with another entity.
- Contracting Officer's Technical Representative (COTR): These individuals have experience in a technical area and provide assistance and recommendations to the contracting officer regarding technical matters and performance of a contract against the technical requirements as outlined in the contract document.
- Administrative Contracting Officer (ACO): This person has the responsibility of administration over a government contract and is assigned this authority from the contracting officer.

Registration as a Contractor

Unlike opportunities in the commercial sector, bidding and performing work on a federal contract requires an entity to formally register with the federal government. There are several steps a prospective international contractor must take in this process in order to complete these registrations:

- Obtain a NATO Commercial and Government Entity (NCAGE) code. This is a code
 that uniquely identifies a foreign owned company with the NCAGE system and is
 required for firms to complete their registration in the System for Award
 Management (SAM), which we'll discuss below. To obtain this code a company must
 register with the NATO Support and Procurement Agency, which can be completed
 using the NATO Codification Tool website
 (https://eportal.nspa.nato.int/ac135public/).
- After obtaining the NCAGE code, a company must next obtain a DUNS number, which can be completed online (http://fedgov.dnb.com/webform). Upon completion of the registration a company will receive their DUNS code, which can then be used for registration with SAM.gov.
- Registration on SAM.gov All companies, foreign and domestic, that are interested in contracting with the United States Federal Government must register on SAM.gov. Entities will need to create an account, and then complete the steps for registration. There is a detailed list of the steps that must be taken to register on SAM.gov in the attached link, which provides step-by-step instructions for an entity to complete the registration (<u>Quick Guide for Grants Registrations.pdf (usda.gov</u>)).

What the Government Looks for in a Contractor, and Where to Find Opportunities

In looking at potential contractors, the federal government looks for a particular set of skills and/or products to fill a need that is either not currently addressed amongst the federal workforce or needed to enhance the workforce and to meet the goal of a particular agency's mission. This can range across a variety of issues and challenges, from process management, information technology process improvement and software development, to manufacture of new and innovative products enhancing the ability of the federal government to meet the mission of its respective agencies. Connecting the skill sets and products to particular contracting opportunities requires the contractor to get to know its end customer, in this case the federal agencies with which it is looking to conduct business. Many of the agencies within the federal government have "industry days" that are designed to facilitate introductions, communicate agency needs, and identify upcoming contract opportunities which contractors can participate in. Prior to the COVID-19 pandemic these were conducted in person. At the time of this writing some industry days are conducted in a hybrid environment, combining both in person and virtual events.

Prospective contractors can also choose to utilize a number of procurement databases and services that are specific to federal contracting to identify upcoming opportunities. These range from government websites (i.e., usa.gov and sba.gov), to subscription databases with

increased functionality to identify opportunities that may be relevant to the particular contractor.

Contract Types and Their Importance to Prospective Contractors

Contractors should also be aware of the different contract types typically seen in the federal space. Each contract type brings additional challenges and compliance requirements to successfully navigate working with federal government agencies. Below we identify different contract types that contractors can expect to encounter as they begin to pursue federal work:

- **Fixed Price:** Contracts of this type are fixed at the time of award. Outside of change orders processed during the contract, the pricing does not change during the performance of the project, regardless of the cost incurred by the contractor.
- Time and Materials: Contracts of this type are structured whereby the contractor charges for its labor hours incurred times an agreed upon rate by labor category.
 Some time and materials contracts also allow for a burden of general and administrative to be added to the cost of materials in billing to the government end user.
- **Cost-reimbursable:** This contract type can go by several names (cost-plus fixed fee, cost-plus award fee, cost-plus incentive fee). Contractors are reimbursed the costs they incur plus a burden of indirect cost rate (comprised of fringe, overhead and general and administrative (G&A) expenses) the costs incurred, plus fee (profit).

Each of the contract types provide additional risks and compliance requirements that contractors should consider when determining whether to pursue an opportunity:

- **Fixed Price:** The greatest risk lies on the contractor with fixed price contracts, and places reliance on a strong estimating process to safeguard a profitable result. Contracts of this type typically have the least amount of compliance requirements for the contractor due to the fixed nature of the contract price. Contractors should still be aware that it is possible, though not required, during the procurement process that a contracting officer may request pricing support.
- Time and Materials: The primary risk for the contractor lies in its ability to bid out each of the labor rate categories that will be utilized on the contract. Inaccurate pricing could result in a contract that operates at a loss. When preparing bids for this contract type, contractors should make full use of the data within the accounting system, compensation studies, and other relevant information to recover the labor cost plus a profit. Contractors should also note that some time and materials contracts allow the contractor to charge a percentage of G&A costs.

- When this occurs, the contract then takes on a component of cost-reimbursable contracts, which we will explore further below.
- Cost-reimbursable: This contract type bears the greatest risk to the government, and therefore carries the most compliance requirements for the contractor. Prospective contractors will need to ensure they have an adequate accounting system that can accumulate and segregate costs by cost type and contract, and also calculate indirect rates on a timely basis. Performance on cost-reimbursable contracts also carries an annual reporting requirement for an incurred cost submission, which is due six months after the company's fiscal year-end. This is a significant reporting package that provides the government with the company's accounting data for the year, cost allocations, indirect rate calculations, and costs incurred per contract, among other additional information. Contractors should be careful to evaluate the cost/benefit of entering into cost-reimbursable contracts due to the additional compliance burden placed upon the company.

As we've discussed throughout this chapter, doing business with the government requires companies to meet certain compliance requirements, and those requirements can differ depending on contract type and agency with which the company is looking to engage. Depending on the size, complexity, and technical requirements of a contract offering, a company may find they need to comply with certain business systems. We address the significant systems here:



- Accounting System: This is the most common compliance requirement amongst government contracting. A company must have an approved accounting system before it can be awarded and perform work on a cost reimbursable contract. The Defense Contract Audit Agency (DCAA) typically performs these assessments, although independent CPA firms are often allowed to provide as well, should the contract opportunity allow for it. Prospective contractors will be responsible for establishing and maintaining an acceptable system design for accumulating costs under federal contracts. Key requirements of an acceptable system are listed in the form SF 1408, and they include the segregation of direct, indirect, and unallowable costs, a timekeeping system with job codes and an approval flow, and an accounting close cycle that occurs at least monthly.
- Estimating System: This is the contractor's system, including policies and procedures, for estimating and budgeting for purposes of preparing cost estimates

to bid on government contracts. While most companies have informal policies and procedures as part of their procurement process, the estimating system formalizes these procedures. In order for a contractor's estimating system to be approved, it must meet all the requirements as set forth by the government and will need to be audited by DCAA or an independent CPA firm. Due to the timing of preparing the system, maintaining the system, and obtaining the compliance, small to mid-sized contractors may not all have this system in place.

Purchasing System: This is a formal system that a company has in place that
addresses a company's own procurement process for materials, subcontractors,
and other costs. The requirement for an approved purchasing system is typically for
larger contract offerings and calls for significant compliance requirements. Unless
specifically required by a contract, small to mid-sized companies typically do not
have an approved purchasing system in place due to the costs for both initial and
ongoing compliance.

There are additional business systems that can be required for a prospective contractor, including material management, property management, and earned value management; however, the systems that we have noted above are the three most commonly utilized by small to mid-sized government contractors.

Closing Considerations

Prior to entering the government contracting space, contractors should evaluate the applicable compliance requirements, competitive environment, and specific requirements

by agency. Upon making the decision to enter the space, contractors should be careful to read the request for proposal document early in the procurement process for any and all compliance requirements to be considered for award, including the compliance requirements we have listed above. Some components of the RFP can require a significant time investment and will require proper planning in order to meeting these requirements in preparing a successful award.



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